

*United States Court of Appeals
for the Second Circuit*



APPENDIX

ORIGINAL **75-7307**

**United States Court of Appeals
For the Second Circuit.**

AL DAYON, individually and on behalf of **MASTERCRAFT
ELECTRONICS CORP.**,
Plaintiff-Appellant,
against

THE HONORABLE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT, THE HONORABLE HAROLD A. STEVENS, THE HONORABLE THEODORE R. KUPFERMAN, THE HONORABLE GEORGE TILZER, THE HONORABLE AARON STEUER and THE HONORABLE EMILIO NUNEZ, Justices of the Supreme Court of the State of New York, Appellate Division, First Department,
Defendants-Appellees,

THE HON. VINCENT A. MASSI, Justice of the Supreme Court of the State of New York, New York County, DOWNE COMMUNICATIONS, INC., EDWARD R. DOWNE, JR., WILLIAM H. KEHL as Sheriff of the City of New York, and THE AETNA CASUALTY AND SURETY COMPANY,
Defendants.

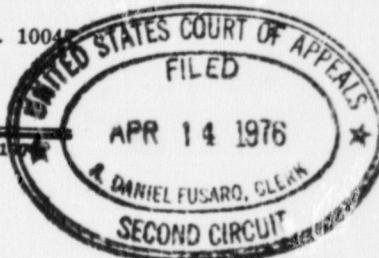
ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX.

CHARLES SUTTON
Attorney for Appellant
299 Broadway
New York, N. Y. 10007

LOUIS J. LEFKOWITZ
Attorney General of the State of New York
Attorney for Defendants-Appellees
Two World Trade Center
New York, N. Y. 10048

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 782-6978—10007
(8763)



PAGINATION AS IN ORIGINAL COPY

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x

AL DAYON, individually and on behalf of
MASTERCRAFT ELECTRONICS CORP.,

Plaintiff-Appellant,

-against-

THE HONORABLE SUPREME COURT OF THE STATE
OF NEW YORK, APPELLATE DIVISION, FIRST
DEPARTMENT, THE HONORABLE HAROLD A.
STEVENS, THE HONORABLE THEODORE R.
KUPFERMAN, THE HONORABLE GEORGE TILZER,
THE HONORABLE AARON STEUER AND THE HONOR-
ABLE EMILIO NUNEZ, JUSTICES OF THE SUPREME
COURT OF THE STATE OF NEW YORK, APPELLATE
DIVISION, FIRST DEPARTMENT,

Defendants-Appellees,

THE HON. VINCENT A. MASSI, JUSTICE OF THE
SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK
COUNTY, DOWNE COMMUNICATIONS, INC., EDWARD R. DOWNE,
JR., WILLIAM H. KEHL as Sheriff of the City of
New York, and THE AETNA CASUALTY AND SURETY COMPANY,

Defendants.

-----x

A

DOCKET

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

G. Form No. 104 Rev.

74 CIV. 5616

TITLE OF CASE

ATTORNEYS

AL DAYON, individually and on behalf of
MASTERCRAFT ELECTRONICS CORP.,

For plaintiff:

Charles Sutton
299 B'way, NYC 10007- 964 8612

VS.

THE HONORABLE SUPREME COURT OF THE STATE OF
NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT,
THE HONORABLE HAROLD A. STEVENS, *✓ 5/21/75*
THE HONORABLE THEODORE R. KUPFERMAN, *✓ 5/21/75*
THE HONORABLE AARON STEUER and *✓ 5/21/75*
THE HONORABLE EMILIO NUNEZ, Justices of the *✓ 5/21/75*
Supreme Court of the State of New York, Appellate
Division, First Department, the
HON. VINCENT A. MASSI, Justice of the Supreme
Court of the State of New York, New York County.
DONNE COMMUNICATIONS, INC.,
EDWARD R. DONNE, JR.,
WILLIAM H. KEHL, as Sheriff of the City of
New York and The Aetna Casualty and Surety
Company.

For defendant:

5/21/75

STATISTICAL RECORD

COSTS

DATE

NAME OR
REC'D PT NO.

REC.

DISB.

4. 5 mailed *x*

Clerk

*5/21/75**11**D*4. 6 mailed *5/21/75*

Marshal

*5/21/75**11**D*

Basis of Action: Civil Rights

42 USC 1983 & 28 USC 2201 &
2203

Action arose at:

Docket fee

Witness fees

Depositions

DOCKET

84 CV. 5616

Pg#2

DATE	PROCEEDINGS	Date Order or Judgments Not Entered
Dec 20, 74	Filed Complaint, issued summons.	
Jan 8, 75	Filed Summons and marshals ret. Served: The Hon Sup. Ct. State of NY App. Div. First Dept. on 12/20/74 The Hon Vincent A. Massi, Justice, Sup. Ct. NY City, on 1/7/75	
Jan 20, 75	Filed Dfts. Supreme Ct. of the State of NY Appellate Div. First Dept. affidavit and notice of motion to dismiss complaint. ret. 2/4/75.	LJL
Jan 20, 75	Filed Dfts. Supreme Ct. of the State of NY Appellate Div. First Dept. Memorandum of Law.	
Feb 10, 75	Filed Affidavit by Charles Sutton, Pltffs, Atty.	
Mar 17, 75	Filed Memo. End. on motion dtd. 1/20/75. Motion granted in accordance with mem memorandum decision filed herewith. Ward J. (mailed notice)	
Mar 17, 75	Filed Memorandum Order. Dfts. motion to dismiss for lack of subject matter jurisdiction is granted. Settles Order on notice. Ward J. (mailed notice)	
4-11-75	PRE-TRIAL CONFERENCE HELD BY Ward	
4-22-75	Filed Order that the motion for defts. Justices of the Supreme Court of the State of New York, Appellate Division, First Dept., to dismiss the complaint for lack of jurisdiction over the subject matter is granted.....Ward, J. (mailed notice)	
5-9-75	PRE-TRIAL CONFERENCE HELD BY Ward	
5-15-75	Filed Order of Dismissal.....Ward, J. (mailed notice)	
5-21-75	Filed Pltff's. notice of appeal from the order of this Court entered 5-9-75. Mailed notice to Atty. General, State of N.Y., World Trade Center, N.Y.C.	

AMENDED NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAY 29 1975

S.D. OF N.Y.

AL DAYON, individually and on behalf of
MASTERCRAFT ELECTRONICS CORP.,

Plaintiff,

-against-

THE HONORABLE SUPREME COURT OF THE STATE
OF NEW YORK, APPELLATE DIVISION, FIRST
DEPARTMENT, THE HONORABLE HAROLD A.
STEVENS, THE HONORABLE THEODORE R.
KUPFERMAN, THE HONORABLE GEORGE TILZER, THE
HONORABLE AARON STEUER AND THE HONORABLE
EMILIO NUNEZ, JUSTICES OF THE SUPREME COURT
OF THE STATE OF NEW YORK, APPELLATE DIVI-
SION, FIRST DEPARTMENT, THE HON. VINCENT A. MASSI,
JUSTICE OF THE SUPREME COURT OF THE STATE OF
NEW YORK, NEW YORK COUNTY, DOWNE COMMUNICATIONS,
INC., EDWARD R. DOWNE, JR., WILLIAM H. KEHL as
Sheriff of the City of New York and THE AETNA
CASUALTY AND SURETY COMPANY,

AMENDED
NOTICE
OF
APPEAL
74 Civ.
5616 RJW

Defendants.

PLEASE TAKE NOTICE that the undersigned hereby appeals
to the Court of Appeals for the Second Circuit from the order of
this Court entered April 22, 1975 and from each part thereof.

Charles Sutton
CHARLES SUTTON
Attorney for Plaintiff
299 Broadway
New York, N.Y. 10007
964 8612

Dated: May 29, 1975.

TO: Attorney General, State of
New York
World Trade Center
New York, New York

ORDER ON APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

AL DAYON, individually and on behalf of :
MASTERCRAFT ELECTRONICS CORP., :

Plaintiff, :

-against-

THE HONORABLE SUPREME COURT OF THE STATE :
OF NEW YORK, APPELLATE DIVISION, FIRST :
DEPARTMENT, THE HONORABLE HAROLD A. :
STEVENS, THE HONORABLE THEODORE R. :
KUPFERMAN, THE HONORABLE GEORGE TILZER, :
THE HONORABLE AARON STEUER and THE HONOR- :
ABLE EMILIO NUNEZ, JUSTICES OF THE SUPREME :
COURT OF THE STATE OF NEW YORK, APPELLATE :
DIVISION, FIRST DEPARTMENT, THE HON. :
VINCENT A. MASSI, JUSTICE OF THE SUPREME :
COURT OF THE STATE OF NEW YORK, NEW YORK :
COUNTY, DOWNE COMMUNICATIONS, INC., EDWARD :
R. DOWNE, JR., WILLIAM H. KEHL as Sheriff :
of the City of New York and THE AETHA :
CASUALTY AND SURETY COMPANY, :

ORDER

74 Civ. 5616
RJW

Defendants.

-----Y

In the above entitled action, a motion having been
made for defendants, Justices of the Supreme Court of the State
of New York, Appellate Division, First Department, for an order
pursuant to Rule 12(b)(1) of the Fed. R. Civ. P. dismissing the
complaint for lack of jurisdiction over the subject matter and
the Court having issued and filed its Memorandum Decision dated
March 17, 1975, it is hereby

ORDERED, that the motion for defendants, Justices of
the Supreme Court of the State of New York, to dismiss the
complaint for lack of jurisdiction over the subject matter is
granted.

Dated: New York, New York
April, 22, 1975

/s/ ROBERT J. WARD
UNITED STATES DISTRICT JUDGE

MEMORANDUM DECISION OF DISTRICT COURT
JUDGE ROBERT J. WARD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
AL DAYON, individually and on behalf
of MASTERCRAFT ELECTRONICS CORP.,

Plaintiff,

74 Civ. 5616
R.J.W.

-against-

THE HONORABLE SUPREME COURT OF THE STATE
OF NEW YORK, APPELLATE DIVISION, FIRST
DEPARTMENT, THE HONORABLE HAROLD A. STEVENS,
THE HONORABLE THEODORE . . KUPFERMAN, THE
HONORABLE GEORGE TILZER, THE HONORABLE
AARON STEUER and THE HONORABLE EMILIO
NUNEZ, Justices of the Supreme Court
of the State of New York, Appellate
Division, First Department, the HON.
VINCENT A. MASSI, Justice of the Supreme
Court of the State of New York, New York
County, DOWNE COMMUNICATIONS, INC.,
EDWARD R. DOWNE, JR., WILLIAM H. KEHL,
as Sheriff of the City of New York and
The Aetna Casualty and Surety Company,

Defendants.

-----x
Defendants, the Justices of the Supreme Court of
the State of New York, Appellate Division, First Department,
move for an order, pursuant to Rule 12(b)(1), Fed. R. Civ. P.,
dismissing the complaint for lack of jurisdiction over the
subject matter. The action was brought pursuant to the
Civil Rights Act, 42 U.S.C. §1983, and jurisdiction is invoked
under 28 U.S.C. §1333(3), by Al Dayon, individually and on
behalf of Mastercraft Electronics Corp.

MEMORANDUM DECISION OF DISTRICT COURT JUDGE ROBERT J. WARD

Plaintiff alleges that actions taken by these and other defendants, in effect, deprived him of constitutionally secured privileges and immunities and violated his constitutionally protected rights to due process of law and equal protection. In sum, plaintiff alleges that he was deprived of his rights as a result of the Appellate Division's failure to comply fully with New York law governing the vacation of a prejudgment order of attachment. Consequently, he contends that the Appellate Division's order dated February 13, 1973 vacating an attachment previously granted him was improper. In addition, he alleges that his rights were violated by the decision of defendant Massi, which resulted in the entry of an order on February 26, 1973 dismissing his complaint with leave to serve an amended complaint, without any motion to that effect being made by his adversaries. He refused to amend his complaint and a judgment dismissing the case on the merits was entered on March 13, 1973.

In addition, plaintiff contends that he was wrongfully denied judicial review of his grievances, in the first instance, by the refusal of the Appellate Division to grant him leave to appeal its order of February 13 to the New York Court of Appeals, and secondly, by its dismissal of his appeal from the February 26 order of the Supreme Court on

MEMORANDUM DECISION OF DISTRICT COURT JUDGE ROBERT J. WARD

the grounds that the judgment of March 13, 1973 "superseded" the order of February 26.

The complaint requests this Court to annul the Appellate Division's order of February 13 vacating the pre-judgment order of attachment originally granted by the Supreme Court, Bronx County, at Special Term, as well as any other actions or proceedings arising out of the Appellate Division's order. In addition, plaintiff seeks a declaratory judgment that the complaint and affidavits submitted by the plaintiff to the state court are sufficient to show that plaintiff has a cause of action; and that the complaint constitutes a legally sufficient pleading. For the reasons hereinafter discussed, even when one views plaintiff's claims in the most favorable light, it is clear that this Court lacks jurisdiction over the subject matter.

Title 28 U.S.C. §1333(3) confers jurisdiction upon district courts when there is a constitutional claim "of sufficient substance to support federal jurisdiction" Hagans v. Lavine, 415 U.S. 528, 536 (1974). Since the rights sought to be protected under 42 U.S.C. §1983 are fundamental to our system of justice, district courts should only dismiss claims for lack of jurisdiction when they are "so insubstantial, implausible, foreclosed by prior decisions . . . or otherwise completely devoid of merit . . ." Id. at 543, quoting

MEMORANDUM DECISION OF DISTRICT COURT JUDGE ROBERT J. WARD

Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 666 (1974).

Plaintiff's claimed deprivations are, in this Court's view, sufficiently without merit to preclude the invocation of subject matter jurisdiction. There is, for example, no constitutionally guaranteed right to a pre-judgment attachment. In fact, a three-judge court in Bert Randolph Sugar and Wrestling Revue, Inc. v. Curtis Circulation Co., 74 Civ. 78 (S.D.N.Y. Oct. 17, 1974), appeal docketed, 43 U.S.L.W. 3405 (U.S. Jan. 13, 1975) (Nos. 74-858 and 74-859), raises a number of serious questions concerning the constitutionality of the New York statute which authorized the pre-judgment order of attachment originally granted to the plaintiff.

Moreover, any deprivation of rights which may have obtained from the unfavorable judgment of March 13 was self-imposed since plaintiff voluntarily refused to amend his complaint. There is no constitutionally protected right to litigate such matters.

In essence, therefore, plaintiff seeks to have this Court review the propriety of state court orders and a judgment. This it cannot do. Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). See also Hill v. McClellan, 490 F.2d 859, 860 (5th Cir. 1974); Atchley v. Greenhill, 373 F. Supp.

MEMORANDUM DECISION OF DISTRICT COURT JUDGE ROBERT J. WARD

512, 514 (S.D. Texas 1974); Jemzura v. Belden, 281 F. Supp. 200, 205 (N.D.N.Y. 1968). Plaintiff also asks this Court to grant relief very much akin to the relief he sought in the state litigation. For example, he asks this Court to declare his complaint to have been legally sufficient. He also requests this Court to annul the vacation of a pre-judgment order of attachment. Such actions are proper for an appropriate appellate court but not a federal trial court. See, e.g., Adkins v. Underwood, 370 F. Supp. 510, 514-15 (N.D. Ill. 1974). Plaintiff has, therefore, not advanced a claim cognizable under either the Civil Rights Act or the Constitution. Accordingly, the defendants' motion to dismiss for lack of subject matter jurisdiction is granted. There is a serious question regarding defendants' immunity from suit. Since defendants have not chosen to argue this question and the Court has determined that it lacks subject matter jurisdiction, it is unnecessary to pass upon this question.

Settle order on notice.

Dated: March 17, 1975

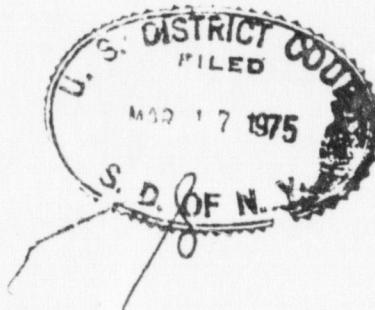
Robert J. Ward
U. S. D. J.

MEMO ENDORSED

Motion granted in accordance
with memorandum decision filed herewith.

Robert J. Ward
U. S. D. C.

Dated: MARCH 17, 1975



MAR 17 1975
MICROFIL

DEFENDANTS' NOTICE OF MOTION

MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

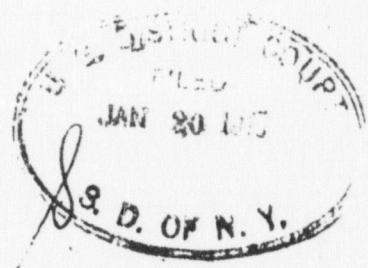
-----X
AL DAYON, individually and on behalf of :
MASTERCRAFT ELECTRONICS CORP.,

: Plaintiff,

: -against-

THE HONORABLE SUPREME COURT OF THE
STATE OF NEW YORK, APPELLATE DIVISION, :
FIRST DEPARTMENT, THE HONORABLE HAROLD
A. STEVENS, THE HONORABLE THOMAS R. :
KUPFERMAN, THE HONORABLE GEORGE
TILZER, THE HONORABLE AARON STUER :
and THE HONORABLE EMILIO NUNEZ,
Justices of the Supreme Court of the :
State of New York, Appellate Division,
First Department, the HON. VINCENT A. :
MASSI, Justice of the Supreme Court of
the State of New York, New York County, :
DOWNE COMMUNICATIONS, INC., EDWARD R.
DOWNE, JR., WILLIAM H. KIRK, as
Sheriff of the City of New York and The :
Aetna Casualty and Surety Company,

: Defendants.



NOTICE OF MOTION

RJW

74-Civ. 5616

DEFENDANTS' NOTICE OF MOTION

S I R :

PLEASE TAKE NOTICE that upon the complaint filed in this action and the annexed memorandum of law of Burton Herman, Assistant Attorney General, the undersigned will move this court at a motion part thereof to be held at the United States Court-house, Foley Square, New York, New York on February 4, 1975 at 2:15 p.m. in the afternoon or as soon thereafter as counsel may be heard for an order dismissing the complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure upon the ground that the court lacks jurisdiction of the subject matter of the complaint and for such other and further relief as the court deems just and proper.

Dated: New York, New York
January 16, 1975

Yours, etc.,

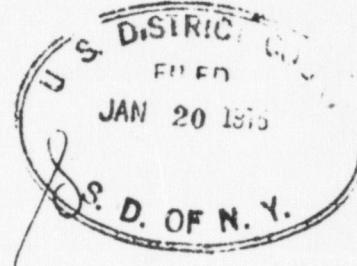
LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Supreme Court
of the State of New York,
Appellate Division, First
Department and its Justices
By

Burton Herman
BURTON HERMAN
Assistant Attorney General
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel No. (212) 488-7410

TO: MR. CHARLES CUTTON
299 Broadway
New York, N. Y. 10007

DEFENDANTS' MEMORANDUM OF LAW

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



AL DAYON, individually and on behalf of :
MASTERCRAFT ELECTRONICS CORP.,

Plaintiff,

-against-

: 74 Civ. 5616
R.J.W.

THE HONORABLE SUPREME COURT OF THE STATE
OF NEW YORK, APPELLATE DIVISION, FIRST
DEPARTMENT, THE HONORABLE HAROLD A.
STEVENS, THE HONORABLE THEODORE R.
KUPFERMAN, THE HONORABLE GEORGE TILZER,
THE HONORABLE AARON STEUER and THE
HONORABLE EMILIO NUNEZ, Justices of the
Supreme Court of the State of New York,
Appellate Division, First Department, the
Hon. VINCENT A. MASSI, Justice of the
Supreme Court of the State of New York,
New York County, DOWNY COMMUNICATIONS,
INC., EDWARD R. DOWD, JR., WILLIAM J.
KEHL, as Sheriff of the City of New York :
and The Aetna Casualty and Surety Company,

Defendants.

MEMORANDUM OF LAW FOR THE SUPREME
COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION, FIRST
DEPARTMENT AND ITS JUSTICES IN
SUPPORT OF MOTION TO DISMISS
COMPLAINT.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Supreme Court
of the State of New York,
Appellate Division, First
Department and its Justices

BURTON HERMAN
Assistant Attorney General
of Counsel

DEFENDANTS' MEMORANDUM OF LAW

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

AL DAYON, individually and on behalf of
MASTERCRAFT ELECTRONICS CORP.,

Plaintiff,

-against-

THE HONORABLE SUPREME COURT OF THE STATE
OF NEW YORK, APPELLATE DIVISION, FIRST
DEPARTMENT, THE HONORABLE HAROLD A.
STEVENS, THE HONORABLE THEODORE R.
KUPFERMAN, THE HONORABLE GEORGE TILZER,
THE HONORABLE AARON STEUER and THE
HONORABLE EMILIO NUNEZ, Justices of the
Supreme Court of the State of New York,
Appellate Division, First Department, the
HON. VINCENT A. MASSI, Justice of the
Supreme Court of the State of New York,
New York County, DOWNE COMMUNICATIONS,
INC., EDWARD R. DOWNE, JR., WILLIAM H.
KEHL, as Sheriff of the City of New York
and The Aetna Casualty and Surety Company,

74 Civ. 5616

R.J.W.

Defendants.

-----x

MEMORANDUM OF LAW FOR THE SUPREME
COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION, FIRST DEPART-
MENT AND ITS JUSTICES IN SUPPORT
OF MOTION TO DISMISS COMPLAINT.

Statement

This is a motion made pursuant to Rule 12(b)(1) of
the Federal Rules of Civil Procedure to dismiss a complaint
which was initiated under the Civil Rights Act, for lack of

DEFENDANTS' MEMORANDUM OF LAW

jurisdiction over the subject matter.

Factual Allegations

The complaint alleges that plaintiff obtained from the Supreme Court, Bronx County an order of attachment dated August 14, 1972 against defendants Downe Communications Inc. and Edward R. Downe, Jr.; that on November 20, 1972 two motions to vacate the order of attachment were denied; that on November 30, 1972 two orders were entered denying the motions to vacate the order of attachment; that a third order denied a third motion to vacate the order of attachment; that on February 13, 1973, the Appellate Division, First Department reversed the orders denying motions to vacate warrant of attachment. Further, plaintiff alleges that on February 23, 1973, the Supreme Court, New York County rendered an order dismissing the complaint with leave to serve an amended complaint; that plaintiff declined to amend the complaint; that on March 13, 1973 the complaint was dismissed.

ARGUMENT

Plaintiff contends that the Appellate Division's order dated February 13, 1973 and the Supreme Court's order dated February 26, 1973 were rendered in violation of state and federal law. He seeks judgment annuling the order dated February 13, 1973, a declaratory judgment and equitable relief.

DEFENDANTS' MEMORANDUM OF LAW

The complaint must be dismissed for lack of jurisdiction over the subject matter. Federal Courts of inferior jurisdiction have no jurisdiction to review alleged errors in state court judgments. Tang v. Appellate Division of N.Y. Supreme Ct., First Dept., 487 F. 2d 138, 142 (2d Cir. 1973); Anderson v. Lecon Properties, Inc., 457 F. 2d 929, 930 (8th Cir. 1972) cert. denied 409 U.S. 879; see also Lecci v. Cahn, 493 F. 2d 826, 829 (2nd Cir. 1974).

CONCLUSION

THE MOTION TO DISMISS THE COMPLAINT SHOULD BE GRANTED.

Dated: New York, N.Y.
January 16, 1975

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Supreme Court
of the State of New York
Appellate Division, First
Department and its Justices

BURTON HERMAN

Assistant Attorney General
Of Counsel

AFFIDAVIT OF CHARLES SUTTON

UNITED STATES DISTRICT
SOUTHERN DISTRICT OF NEW YORK

AL DAYON, individually and on behalf of
Mastercraft Electronics Corp.,

Plaintiff,

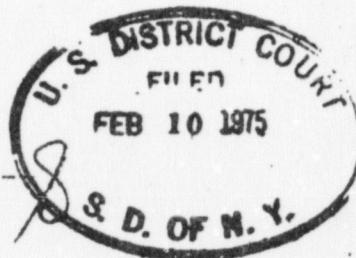
74 Civ. 5616RJW

v.

THE HONORABLE SUPREME COURT OF THE STATE
OF NEW YORK, APPELLATE DIVISION, FIRST
DEPARTMENT, et al.,

Defendants.

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)



CHARLES SUTTON, being duly sworn, deposes and says :

1. I am the attorney for the plaintiff and I am fully familiar with the facts herein.
2. The defendant Appellate Division has moved to dismiss the complaint on the ground that this Court does not have subject matter jurisdiction. The said defendant cites *Tang v. Appellate Division*, New York Supreme Court, First Department, 487 F.2d 138, (2d Cir., 1973) as authority for its motion.
3. The defendant's motion is without merit. The rule recited in *Tang*, supra., which was based on *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L. Ed. 362 (1923) was that a plaintiff who elects to vindicate his constitutional rights through state court proceedings which can be appealed as of right to the highest state appellate court and from there to the Supreme Court, must so pursue his rights and remedies and cannot or should not be heard to break off in midstream and turn to the federal court to make and pursue the same rights and remedies. That rule is totally inapplicable to this case because the plaintiff

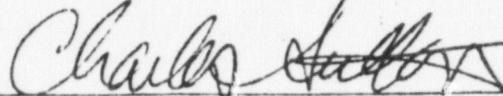
AFFIDAVIT OF CHARLES SUTTON

has never before commenced any action, either in the state court, or in any federal court, to vindicate the constitutional rights sought to be vindicated by this action. The order of the Appellate Division dated February 13, 1973 which plaintiff contends violated his constitutional rights was not appealable as of right to the Court of Appeals of the State of New York, since it was not deemed a final order. The plaintiff applied to this defendant for leave to appeal to the New York State Court of Appeals; this defendant denied that motion without opinion. By this defendant's own action, no review by any court of that challenged order was possible. Neither Tang nor Rooker apply. Two other cases cited by the defendant also do not apply. Anderson v. Lecon Properties, Inc., 457 F. 2d 929 (8th Cir., 1972), cert. denied 409 U.S. 879, is not applicable since the plaintiff in that case could have appealed the adverse order of the Minnesota Supreme Court directly to the Supreme Court and did not do so. Lecci v. Cahn, 493 F. 2d 826 (2d Cir., 1974) is not applicable since in that case the plaintiff, after commencing federal court proceedings, switched to commence state court proceedings upon the same claim without properly preserving his right to return to the federal forum. The Court of Appeals held that this constituted a waiver of the federal action. Additionally, the plaintiff who had commenced the action in his capacity as a police officer had either resigned or retired, and the Court of Appeals ruled that on this ground that cation was moot. The Court of Appeals also noted that the State court proceedings had been carried to the New York State Court of Appeals and that the Supreme Court had apparently denied leave to review.

AFFIDAVIT OF CHARLES SUTTON

In effect the Court of Appeals was also holding that the plaintiff had had his day in court. The plaintiff in this case has not had his day in court on the issues presented here.

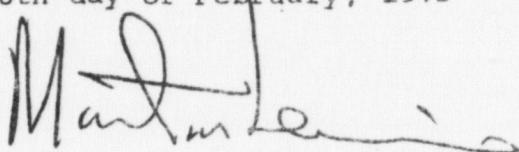
4. The motion should be denied.



CHARLES SUTTON

Sworn to before me this

10th day of February, 1975



MORTON LEVINE
Notary Public, State of New York
No. 31-7516701
Qualified in New York County
Commission Expires March 30, 1976

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AL DAYON, individually and on behalf of
MASTERCRAFT ELECTRONICS CORP.,

Plaintiff,

-against-

THE HONORABLE SUPREME COURT OF THE STATE OF
NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT,
THE HONORABLE HAROLD A. STEVENS, THE HONORABLE
THEODORE R. KUPFERMAN, THE HONORABLE GEORGE
TILZER, THE HONORABLE AARON STEUER and THE
HONORABLE EMILIO NUNEZ, Justices of the Supreme
Court of the State of New York, Appellate Div-
ision, First Department, the HON. VINCENT A.
MASSI, Justice of the Supreme Court of the State
of New York, New York County, DOWNE COMMUNICATIONS,
INC., EDWARD R. DOWNE, JR., WILLIAM H. KEHL, as
Sheriff of the City of New York and The Aetna
Casualty and Surety Company,

Defendants.

-----X

I. Jurisdiction

1. This Court's jurisdiction is based upon 42 U.S.C.
Section 1983, 28 U.S.C. Section 1343(3), 28 U.S.C. Section 2201
and 28 U.S.C. Section 2283.

2. Plaintiff brings this action pursuant to 42 U.S.C.
Section 1983 to redress the deprivation by the defendants, the
Supreme Court of the State of New York, Appellate Division, First
Department and the Honorable Harold A. Stevens, the Honorable
Theodore R. Kupferman, the Honorable George Tilzer, the Honorable
Aaron Steuer, and the Honorable Emilio Nunez, Justices of the
said Supreme Court of the State of New York, Appellate Division,
First Department, acting under color of state law, of the rights,

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privileges and immunities secured to the plaintiff under the Constitution and laws of the United States.

3. Plaintiff brings this action pursuant to 42 U.S.C., Section 1983 to redress the deprivation by the defendants, the Supreme Court of the State of New York, County of New York, and Honorable Vincent A. Massi, Justice thereor, acting under color of state law of the rights, privileges and immunities secured to the plaintiff under the Constitution and Laws of the United States.

4. The plaintiff also brings this action pursuant to the Declaratory Judgment Act, 28 U.S.C. Section 2201, to declare that the order dated February 13, 1973 made by the said Supreme Court of the State of New York, Appellate Division, First Department and by Justices named in Paragraph 2 above, as the panel for the Supreme Court of the State of New York, Appellate Division, First Department on the appeal, in the action entitled "Al Dayon, individually and on behalf of * stercraft Electronics Corp., plaintiff-respondent v. Downe Communications, Inc. and Edward R. Downe, Jr., defendants-appellants, The Chemical Bank, L. F. Dommerich Co., Inc., Joseph O. Barlow, Irwin Natov, Eric H. Javits, Regal Advertising Associates Corp., Campbell-Reynolds, Inc., Alexander Sales Corporation, John Doe, Richard Roe and Richard Roe, Inc., the last three names being fictitious, the true names being unknown, Defendants," under appeal numbers 6323, 6323-A and 6323-B, which action bore index number 15225-1972, when the action was

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commenced in Bronx County, Supreme Court, and index number 23573-1972, when the action was transferred to New York County Supreme Court, is unconstitutional, null and void and is in violation of the plaintiff's rights to the due process of law and to equal protection of the law under the Constitution and Laws of the United States and to annul the said order and to enjoin the enforcement thereof in all respects.

5. The plaintiff also brings this action pursuant to the Declaratory Judgment Act, 28 U.S.C. Section 2201 to declare the orders dated February 23, 1973 of the Supreme Court of the State of New York, County of New York, at Trial Term, Part III, entered in the Office of the Clerk of the County of New York on February 26, 1973 made by Hon. Vincent A. Massi, Justice of said Court, in the Al Dayon action described in Paragraph 4 above, to be unconstitutional, null and void and in violation of the plaintiff's rights to the due process of law and to the equal protection of the law under the Constitution and Laws of the United States, to annul the said orders and each of them and to enjoin the enforcement thereof.

6. This action seeks equitable relief for the protection of plaintiff's civil rights.

7. The plaintiff does not seek any compensatory or punitive damages against any defendant herein.

8. There is no pending state or local criminal

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prosecution and none which the plaintiff seeks to enjoin.

9. The plaintiff seeks to have this Court pass upon the constitutionality of New York Civil Practice Law and Rules, Section 6223, Section 6201, and Section 6212(a) as applied by the defendants named in Paragraph 4 above.

10. The plaintiff seeks to have this Court pass upon the constitutionality of New York Civil Practice Law and Rules, Section 3024(a), Section 3015 and Section 2005 as applied by the defendant, the Supreme Court of the State of New York, County of New York, Hon. Vincent A. Massi, as Justice thereof, the Supreme Court of the State of New York, Appellate Division, First Department and the Appellate Division Justices thereof.

11. There is no possible construction of the said statutes as applied by said defendants which could obviate the necessity of this Court passing upon the constitutionality thereof as applied.

II. Parties

12. All of the individual parties are, upon information and belief, citizens of the United States and residents of the State of New York.

13. The defendant, Downe Communications, Inc. is a corporation organized in the State of Delaware.

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14. The Aetna Casualty and Surety Company is a corporation organized in the State of Delaware.

15. The plaintiff, Al Dayon, is a citizen of the United States and a resident of the County of Kings, City and State of New York and brings this action on his own behalf and on behalf of Mastercraft Electronics Corp., a corporation organized in the State of Delaware.

16. The defendant, H. William Kehl, is the present Sheriff of the City of New York and he is sued in his capacity as such Sheriff and not personally.

III. First Claim for Relief.

17. On or about August 14, 1972 the plaintiff duly applied for an order of attachment (Exhibit 1) against defendants, Downe Communications, Inc. and Edward R. Downe, Jr., in the action described in Paragraph 4 to the Supreme Court, Bronx County at Special Term, Part II upon the affidavit of Al Dayon, sworn to August 12, 1972 (Exhibit 2) and the complaint verified August 12, 1972 (Exhibit 3) pursuant to Article 62, New York State Civil Practice Law and Rules, in particular, Section 6201 and Rule 6212 thereof.

18. Pursuant to New York Civil Practice Law and Rules,¹ / Section 105(q) a verified pleading may be utilized as

Note 1. All references to New York Civil Practice Law and Rules will be made either as "CPLR", or "Civil Practice Law and Rules."

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an affidavit whenever the latter is required.

19. Pursuant to New York Civil Practice Law and Rules, Rule 6212(a), a complaint as a pleading is unnecessary to an application for an order of attachment.

20. On August 14, 1972 an order of attachment was signed by the Supreme Court, Bronx County as aforesaid in the action described in paragraph 4 above (Exhibit 1).

21. A true copy of the order of attachment, of the affidavit of Al Dayon sworn to August 12, 1972 and of the complaint verified August 12, 1972 are attached hereto and marked Exhibit 1, Exhibit 2 and Exhibit 3, respectively.

22. New York Civil Practice Law and Rules, Section 6201, entitled "Grounds for Attachment", provides:

"An order of attachment may be granted in any action except a matrimonial action, where the plaintiff has demanded and would be entitled, in whole or in part, or in the alternative to a money judgment against one or more defendants when:

1. the defendant is a foreign corporation or not a resident or domiciliary of the State; or

• • •

5. the defendant, in an action upon a contract, express or implied, has been guilty of a fraud in contracting or incurring the liability; or

• • •

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8. there is a cause of action to recover damages for the conversion of personal property, or for fraud or deceit."

23. The plaintiff by the affidavit of Al Dayon, sworn to August 12, 1972 (Exhibit 2) and by the complaint verified August 12, 1972 (Exhibit 3), considered as an affidavit under Civil Practice Law and Rules, Section 105(q), established the first of the eight grounds to authorize an order of attachment set forth in CPLR Section 6201, against defendant, Downe Communications, Inc., namely:

"1. The defendant is a foreign corporation..."

24. That Al Dayon in his affidavit sworn to August 12, 1972 (Exhibit 2) and in the complaint verified August 12, 1972 (Exhibit 3) duly alleged in that application for an order of attachment in the action described in Paragraph 4, above, that the defendant, Downe Communications, Inc., was a foreign corporation.

25. That the defendant, Downe Communications, Inc., admitted and conceded in that attachment action described in Paragraph 3, above, that Downe Communications, Inc., was a foreign corporation.

26. Civil Practice Law and Rules, Rule 6212 entitled "motion papers, undertaking; filing; demand" provides at subparagraph (a) entitled "Affidavit; other papers" :

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"On a motion for an order for an attachment, the plaintiff shall show, by affidavit and such other written evidence as may be submitted, that there is a cause of action and the one or more grounds for attachment provided in Section (6201) that exist and the amount demanded from the defendant above all counterclaims known to the plaintiff."

27. The plaintiff by the affidavit of Al Dayon, sworn to August 12, 1972 (Exhibit 2) and by the complaint verified August 12, 1972 (Exhibit 3), considered as an affidavit under CPLR Section 105(q), showed that the plaintiff, in that action described in Paragraph 4, above, established at least two additional grounds which authorize an attachment under CPLR Section 6201, against the defendant, Downe Communications, Inc., namely:

"5. The defendant in action upon a contract, express or implied

• • •

8. there is a cause of action to recover damages for the conversion of personal property, or for fraud and deceit."

28. The plaintiff by the affidavit of Al Dayon sworn to August 12, 1972 (Exhibit 2) and by the complaint verified August 12, 1972 (Exhibit 3), considered as an affidavit pursuant to CPLR Section 105(q), established by allegations of facts and by documentary evidence that:

The defendant, Downe Communications, Inc. breached the said written contract with Mastercraft Electronics Corp. dated December 28, 1969 for \$2,000,000.00 for advertising and advertising space:

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- (i) that the valid contract dated December, 1969 between Mastercraft Electronics, Corp. and Downe Communications, Inc. was attached thereto;
- (ii) that Mastercraft Electronics Corp. performed that contract on its part;
- (iii) that Downe Communications, Inc., by its letter dated June 4, 1970 repudiated the said contract and refused to perform the same;
- (iv) that the damages caused to Mastercraft Electronics Corp. thereby exceeded \$2,000,000.00.

(b) the defendant, Downe Communications, Inc., breached its contract with plaintiff, Al Dayon, dated February 17, 1970, whereby plaintiff, Al Dayon, was induced to transfer and deliver to Downe Communications, Inc. his 3,400,000 shares of stock in Mastercraft Electronics Corp. on the written promise.

29. That thereafter and pursuant to the said order of attachment dated August 14, 1972 (Exhibit 1) the plaintiff duly caused an undertaking to be issued by The Aetna Casualty and Surety Company dated September 22, 1972 in the amount of \$100,000.00 in accordance with the provisions of the order of attachment.

30. A true copy of the said attachment undertaking issued by The Aetna Casualty and Surety Company is attached hereto and marked Exhibit 4.

31. As a condition to the issuance of said attachment undertaking, the said The Aetna Casualty and Surety Com-

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pany demanded of the plaintiff and received on account of such attachment undertaking a deposit of \$100,000.00 as collateral for that attachment undertaking.

32. Thereafter and before the service of the order of attachment, personal service of the summons in the action described in paragraph 3, above, hereinafter referred to as the "attachment action", was made on the defendants, Downe Communications, Inc. and Edward R. Downe, Jr. on October 13, 1972.

33. Thereafter, on or about October 19, 1972 and October 20, 1972 the Sheriff of the City of New York duly served a copy of the order of attachment herein (Exhibit 1) on Bank of New York and on First National City Bank.

34. Thereafter, on or about October 23, 1972 the defendants, Downe Communications, Inc. and Edward R. Downe, Jr. moved for an order to vacate the order of attachment (Exhibit 5).

35. Thereafter, on or about October 31, 1972 the defendants, Downe Communications, Inc. and Edward R. Downe, Jr., made a second motion to vacate the order of attachment. (Exhibit 6).

36. On November 1, 1972 the two said motions to vacate the said order of attachment were duly submitted at New York State Supreme Court, Bronx County, Special Term, Part I.

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37. The named defendants in that attachment action on those two motions did not serve a copy of either of those two motions to vacate the order of attachment on the Sheriff of the City of New York.

38. The said Supreme Court, Bronx County, Special Term, Part I rendered its decision on the two motions by the defendants, Downe Communications, Inc. and Edward R. Downe, Jr. dated November 20, 1972 denying the two motions to vacate the said order of attachment dated August 14, 1972, (Exhibit 7), as follows:

" ROSENBERG, J.:

Defendants, Downe Communications Inc. and Edward R. Downe, Jr. have moved by two separate applications for an order vacating the ex parte order of attachment obtained by plaintiff on August 14, 1972 which permitted the attachment of property up to the amount of two million dollars belonging to either one or both of the two moving defendants.

Plaintiff has commenced this action against various defendants and has pleaded six separate causes of action all of which demand money damages. Plaintiff alleges that the defendants acting individually and jointly, conspired to defraud and divest him of his stock in Master-Craft-Electronics Corporation, breached a contract with him and with Master Craft and thereafter wasted and plundered the assets of Master Craft forcing it out of business.

Plaintiff contends that on or about December 26, 1968, Master Craft entered into an agreement with Downe Communications whereby the latter agreed to provide a specified amount of advertising space for use of Master Craft

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in return for which Master Craft would deliver to Downe Communications, Campbell-Reynolds, Inc. and Regal Advertising Associates, Inc. a total of 1,333,333 shares of its stock. Thereafter, the defendants fraudulently conspired to force the individual plaintiff herein to convey the shares that he owned in Master Craft in return for a specified number of shares in Alexander Sales Corporation, a subsidy of Downes Communications, Inc. After acquiring the shares of Master Craft, plaintiff was ousted as Chairman of the Board and the obligation of Downe Communications to furnish advertising space to Master Craft pursuant to the agreement of December 26, 1968 was cancelled. Subsequently the assets of Master Craft were plundered and misappropriated by the defendant.

At the present time plaintiff has attached in excess of one million dollars in bank accounts belonging to Downe Communications, Inc. No attachment has been made on the assets of Edward R. Downe, Jr.

Defendants contend that the order of attachment is improper and unnecessary and that it has seriously disrupted their business affairs and will cause them serious financial damage.

Defendants' motions made pursuant to section 6223 CPLR are based on their allegations that the granting of the order of attachment, ex parte in the first instance was improper, that the alleged failure of plaintiff to comply with Rule 6212(d) CPLR requires a vacatur of the order and there is no need for an order of attachment in this case because of the financial solvency of defendant, Downe Communications Inc.

Section 6201 CPLR provides:

'An order of attachment may be granted in any action . . . where the plaintiff has demanded and would be entitled, in whole or in part, or in the alternative, to a money judgment against one or more defendants when

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5. the defendant, in an action upon a contract, express or implied, has been guilty of a fraud in contracting or incurring the liability, or . . .

8. there is a cause of action to recover damages . . . for fraud or deceit.'

It is conceded that Downe Communications Inc. is a foreign corporation, incorporated in the State of Delaware. Although it is licensed to do business in New York, it still is deemed to be a foreign corporation within the meaning of section 6201(1) CPLR, and subject to attachment. (Marklin v. Drew, D. C. N. Y. 1967, 280 F. Supp. 176; Prentiss v. Greene, 193 App. Div. 672; Zeiberg v. Robosonics Inc., 43 Misc. 2d 134).

Section 6211 CPLR provides:

'An order of attachment may be granted without notice, before or after service of summons and at any time prior to judgment...'

Whether an order of attachment will issue in a particular case has been traditionally a question addressed to the discretion of the court and it is well established that upon a motion to vacate a warrant of attachment, the court may not consider the merits of the action and determine whether the plaintiff can succeed. Its function is to ascertain whether or not the plaintiff has made out a prima facie case and complied with the requisite jurisdictional requirement. (American Reserve Ins. v. China Ins., 297 N.Y. 322; Auerbach v. Grand National Pictures, 176 Misc. 1031, aff'd. without opinion, 263 App. Div. 712; Weinstein-Korn-Miller, Sec. 6201.03).

The Court must give the plaintiff the benefit of all of the legitimate inferences and deductions that can be drawn from the facts stated. The truth of all of the facts stated by plaintiff must be assumed in the absence of clear proof to the contrary. (U.S. v. Brown, 247 N.Y. 211; Zale Jewelry Co. v. Laine, 37 Misc. 2d 39; Public Admin. of N.Y. v. Gallo, 20 Misc. 2d 388, aff'd without opinion, 9 A.D. 2d 884).

5.

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As to defendant, Edward R. Downe, Jr., it is apparent that the complaint is based upon the allegations of fraudulently inducing plaintiff to contract with certain defendants and making fraudulent representations which plaintiffs relied upon to their detriment, so as to entitle plaintiff to an order of attachment.

Defendant argues that an order of attachment is not necessary to protect the security of the plaintiff, on any judgment obtained and submits voluminous financial statements, affidavits and exhibits, purportedly showing the financial stability of the moving corporation. Plaintiff submits the affidavit of a certified public accountant alleging that the defendant corporation's debts exceeds its assets, which raises serious questions as to the corporation's present financial condition.

Movants have the burden of proving that the attachment is not necessary for the security of the plaintiff. They failed to meet this burden of proof. (Freedman v. Wilson Securities Corp., 31 A D 2d 789; Fuller Company v. Vitro Corporation of America, 26 A D 2d 916).

Defendants' contention that the attachment must be vacated because plaintiff failed to serve copies of the supporting papers upon which the attachment was granted pursuant to demand, in accordance with CPLR 6212 D is without merit.

Plaintiff allegedly served the supporting papers upon defendants' attorneys by mail, on the day following the demand therefor and under all of the circumstances presented vacatur of the attachment is unwarranted. (7A Weinstein-Korn-Miller, 6212.14).

Accordingly the motions are in all respects denied.

Settle order.

Dated: November 20, 1972

/s/ S.R.R.
J.S.C." (Exhibit 7)

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39. Ther after, orders dated November 30, 1972 on each of the two motions, each order duly made and entered denying each one of the two motions to vacate the order of attachment. (Exhibit 8 and Exhibit 9)

40. The defendants, Downe Communications, Inc. and Edward R. Downe, Jr., duly appealed to the Supreme Court, Appellate Division, First Department from the two said orders dated November 30, 1972.

41. On November 30, 1972, the defendants, Downe Communications, Inc. and Edward R. Downe, Jr., made a third motion to the Supreme Court, Bronx County at Special Term, Part I, for an order vacating the order of attachment dated August 14, 1972 (Exhibit 10).

42. The said defendants did not serve a copy of that motion on the Sheriff of New York County.

43. On December 12, 1972 the said Supreme Court, Bronx County denied the said motion (Exhibit 11).

44. The said defendants, Downe Communications, Inc. and Edward R. Downe, Jr., filed a notice of appeal to the Supreme Court, Appellate Division, First Department from that third order denying the third motion to vacate the order of attachment.

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45. Thereafter, the defendants, Downe Communications, Inc. and Edward R. Downe, Jr., moved the Appellate Division, First Department for an order staying the plaintiff from enforcing the order of attachment and for an expedited appeal. (Exhibit 12)

46. By order dated December 18, 1972, the Appellate Division, First Department denied the motion of defendants, Downe Communications, Inc. and Edward R. Downe, Jr., for a stay of the order of attachment pending appeal, but granted them an expedited appeal on the original record. (Exhibit 13)

47. Thereafter, on or about January 18, 1973 the appeal was duly argued to the Supreme Court of the State of New York, Appellate Division, First Department before the Honorable Presiding Justice Harold R. Kupferman, Hon. Aron Steuer, Hon. Emilio Nunez and Hon. George Tilzer.

48. The defendant, Downe Communications, Inc., stated in its brief to the Supreme Court, Appellate Division, First Department, that the plaintiff, Al Dayon, had duly alleged facts showing causes of action for breaches of contracts in favor of plaintiff, Al Dayon, individually, and on behalf of Mastercraft Electronics Corp. in the verified complaint and in the affidavit of Al Dayon sworn to August 12, 1972.

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49. The said Appellate Division, First Department rendered its decision and opinion dated February 13, 1973 on that appeal as follows:

"Two orders of the Supreme Court, Bronx County (Rosenberg, J.), each entered on November 30, 1972, denying motions to vacate warrant of attachment and order of said court entered on December 27, 1972, which denied a motion to renew, unanimously reversed, on the law and the facts, and the motion granted. Appellants shall recover of respondent \$60 costs and disbursements of these appeals.

As to the first four causes of action pleaded, the complaint is patently deficient. In addition, as to these and the remaining causes of action, plaintiff, when challenged by the motion to vacate, failed to come forward with any evidentiary facts to sustain his conclusory allegations. Furthermore, there is grave doubt as to whether an attachment is needed to secure plaintiff and whether the material submitted was deceptive.

Order filed."

(Exhibit 14)

50. The said Appellate Division, First Department entered its order dated February 13, 1973 on that appeal as follows:

"Appeals having been taken to this Court by the above-named defendants-appellants from two orders of the Supreme Court, Bronx County (Rosenberg, J.), each entered on November 30, 1972, denying motions to vacate warrant of attachment, and from the order of said court entered on December 27, 1972, which denied a motion to renew,

And said appeals having been argued by Mr. Bernard Botein of counsel for appellants, and by Mr. Charles Sutton of counsel for respondent; and due deliberation having been had thereon, and upon the memorandum decision

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of this Court filed herein,

It is unanimously ordered that the orders so appealed from be and the same hereby are reversed, on the law and the facts, and the motions granted. Appellee shall recover of respondent \$60 costs and disbursements of these appeals."

(Exhibit 15)

51. The said order of the said Appellate Division was not appealable as of right to the New York Court of Appeals under New York Civil Practice Law and Rules.

52. In order for the order dated February 13, 1973 to be able to reach the New York State Court of Appeals for review by the New York State Court of Appeals, it was necessary that the said Appellate Division grant leave to so appeal.

53. The plaintiff duly applied to the said Appellate Division for leave to appeal that order dated February 13, 1973 to the New York Court of Appeals. (Exhibit 16)

54. The said Appellate Division denied the plaintiff's aforesaid motion for leave to appeal that order dated February 13, 1973 to the New York Court of Appeals (Exhibit 17) and prevented any review of its order by the New York Court of Appeals.

55. The said order of the Appellate Division is unreviewable by the Court of Appeals on the appeal from

COMPLAINT

the judgment in that attachment action (Exhibit 18).

56. The order dated February 13, 1973 of the said Appellate Division (Exhibits 14, 15) has not been reviewed and cannot be reviewed by the New York Court of Appeals.

57. Civil Practice Law and Rules, Section 6223 entitled "Vacating or modifying attachment," provides:

"Prior to the application of property or debt to the satisfaction of a judgment, the defendant, the garnishee or any person having an interest in the property or debt may move, on notice to each party and the Sheriff, for an order vacating or modifying the order of attachment. Upon the motion, the court shall give the plaintiff a reasonable opportunity to correct any defect. If, after the defendant has appeared in the action, the court determines that the attachment is unnecessary to the security of the plaintiff, it shall vacate the order of attachment. Such a motion shall not of itself constitute an appearance in the action."

58. The order of the Supreme Court, Appellate Division dated February 13, 1973 in the attachment action is illegal, null and void and deprived the plaintiff of the right to due process of law and to the equal protection of the laws under the United States Constitution because the said Honorable Court and the said Honorable Justices of the Court were required as a matter of law by CPLR, Section 6223, as a condition precedent to their power and authority to order the vacatur of that order of attachment dated August 14, 1972

COMPLAINT

(1) to point out the defects in the affidavits submitted in support of the order of attachment and (2) to give the plaintiff a reasonable opportunity to correct any defect. (CPLR Section 6223).

58a. The said defendants, the Honorable Appellate Division and the named Honorable Justices, did not set forth or point out any "defects" in the affidavits submitted in support of the said order of attachment. (See, Paragraphs 49, 50, supra).

58b. The said named defendants, Court and named Honorable Justices did not give the plaintiff in the attachment action any opportunity whatever 'to correct any defects' prior to vacating the order of attachment by the order of the said Honorable Appellate Division dated February 13, 1973.

58c. The plaintiff was invidiously discriminated against and was denied due process of law and the equal protection of the law under the United States Constitution, by the said Honorable Supreme Court of the State of New York, Appellate Division, First Department and by the said named Honorable Justices of that Court, by the order of the said Honorable Appellate Division dated February 13, 1973.

58d. The order of the Supreme Court, Appellate Division dated February 13, 1973 in that attachment action is illegal, null and void and deprived the plaintiff of his constitutional right to due process of law and to the equal protection of the law because:

The statement in that decision referred

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to and incorporated in the order that:

"As to the first four causes of action pleaded, the complaint is patently deficient,"

is without any basis in law to authorize the vacatur of an order of attachment under CPLR Section 6223.

59. Whether any one or more causes of action alleged in a complaint is sufficient or insufficient as a pleading is not and was not any ground or basis, as a matter of law, under New York Civil Practice Law and Rules to vacate the order of attachment, since a complaint is absolutely unnecessary to an application for the issuance of an order of attachment, as shown by CPLR, Section 6201, Rule 6212(a) and Section 6223 (7A Weinstein-Korn-Miller, New York Civil Practice, 6223.12).

60. The aforesaid statements in the decision of the Appellate Division, First Department dated February 13, 1973 have no basis in fact and no basis in law because each one of the first four causes of action set forth in the verified complaint (Exhibit 3) is sufficient as a pleading on its face, as a matter of law.

61. The statement in the decision dated February 13, 1973 of the Appellate Division, First Department in the attachment action as follows:

"In addition, as to these and the re-

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maining causes of action, plaintiff, when challenged by motion to vacate, failed to come forward with any evidentiary facts to sustain his conclusory allegations."

is without any basis in law and without any basis in fact.

62. The fifth and the sixth causes of action, just as the first, second, third and fourth causes of action, of the verified complaint (Exhibit 3) are sufficient as a matter of law on their face as a pleading, and are sufficient as an affidavit CPLR 105(q) setting forth facts to show that the plaintiff has a cause of action against the defendant, Downe Communications, Inc. and defendant, Edward R. Downe, Jr. (Exhibit 3) pursuant to CPLR Rule 6212(a).

63. The plaintiff presented documentary evidence and facts by affidavits (Exhibits 2 and 3) showing that plaintiff has not just one cause of action against the defendant, Downe Communications, Inc. and against the defendant, Edward R. Downe, Jr., but six causes of action. (See, Also, Decision in the attachment action set forth in Paragraph 28, above dated November 20, 1972 by Justice Samuel R. Rosenberg, New York State Supreme Court, Bronx County at Special Term, Part I, holding that the order of attachment was valid and that the plaintiff had set forth facts establishing, *prima facie*, causes of action against those defendants (Exhibit 7).

64. The record facts show that three times, on three motions by the defendants, Downe Communications, Inc.

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and Edward R. Downe, Jr. to vacate the order of attachment dated August 14, 1972, the New York Supreme Court, Bronx County, at Special Term, Part I held that the plaintiff's affidavits were sufficient to authorize and to sustain the issuance of the order of attachment (Exhibits 7).

65. The said decision of the said Justices of the Appellate Division, First Department did not mention and did not show that they had considered the affidavit of Al Dayon sworn to August 12, 1972 in support of the order of attachment in reversing the three orders of the Supreme Court, Bronx County denying the three motions to vacate the order of attachment, and in vacating the order of attachment, which they were required to do as a matter of law pursuant to CPLR Section 6201, Rule 6212(a) and Section 6223; their decision and order showing that the said Appellate Division Justices had considered only the verified complaint, as a pleading.

66. The statement in the said decision dated February 13, 1973 (Exhibit 14) as follows:

"Furthermore, there is grave doubt as to whether an attachment is needed to secure plaintiff and whether the material submitted was deceptive."

is vague and uncertain as to its purpose or meaning. It was not a determination that the order of attachment was unnecessary to the security of the plaintiff pursuant to CPLR Section 6223.

67. The undisputable facts are that Downe Communications, Inc. had no assets whatever in the State of New York

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subject to attachment which could secure the payment of a judgment against Downe Communications, Inc., an admitted foreign corporation except the windfall cash sum sought to be attached by the order of attachment, and that all of its assets were mortgaged to and assigned to the Bank of New York and First National City Bank as collateral for outstanding loans, which were in default in payment. (Exhibits 2 and 3) (Exhibits 19, 20).

68. As a matter of law, the statement in the decision was not a determination that the order of attachment was unnecessary to the security of the plaintiff not only because it did not say so, but also because the determination that an order of attachment is unnecessary to the security of a plaintiff must be made in those express words as a result of a finding of fact supported by the evidence as that Appellate Division, First Department expressly ruled in George A. Fuller Co. v. Vitro Corp., 26 A.D. 2d 916, 274 N.Y.S. 2d 600 (1st Dept. 1959) namely that a finding in the language of the statute was required before an order of attachment could be vacated on the ground that it is unnecessary to the security of the plaintiff, to wit:

"In the circumstances, the attachment could only be vacated if it should be found that it is 'unnecessary to the security of the plaintiff'." George A. Fuller Co. v. Vitro Corp., 26 A.D. 2d 916, 274 N.Y.S. 2d 600 (1st Dept., 1969)

69. As a matter of law, a condition precedent to such a finding of fact under CPLR 6223 is that the order of attachment must be jurisdictionally valid and sufficient.

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70. The said Appellate Division, First Department held on that issue in the case cited below :

"On this motion, brought by order to show cause to vacate an attachment properly issued against property of a foreign corporation, the burden is on the defendant to show that the attachment is unnecessary to the security of the plaintiff. (See CPLR 6223; George A. Fuller Co. v. Vitro Corp., 26 A.D. 2d 916, 274 N.Y.S. 2d 600). On the record we conclude that the defendant has failed to sustain that burden, and therefore that the attachment should not have been vacated." (Underscoring added).

Hydromar Corp. etc. v. Construction Aggregate etc., 32 A.D. 2d 749, 300 N.Y.S. 2d 797 (1st Dept. 1969).

71. The decision dated February 13, 1973 (Exhibit 14) and the order dated February 13, 1973 (Exhibit 15) vacated the order of attachment dated August 14, 1972 without complying with the mandatory requirement of CPLR Section 6223 as a condition precedent to the power and authority of the Court to order the vacatur of an order of attachment that

"Upon the motion, the court shall give the plaintiff a reasonable opportunity to correct any defect." (Underscoring added).

IV. Second Claim for Relief.

72. Plaintiff repeats each allegation set forth in paragraphs 1 to 71 .

73. The named defendants by the decision and order dated February 13, 1973 (Exhibits 7 and 8) ruled and held that

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"As to the first four causes of action pleaded, the complaint is patently deficient."

74. That the said named defendants in the decision dated February 13, 1973 (Exhibit 14) describe the last two causes of action set forth in the complaint, verified August 12, 1972, as consisting of "conclusory allegations".

75. That the effect of such language by the said named defendants as to the two causes of action of that complaint (Exhibit 3) was to hold that the last two causes of action failed to state facts sufficient to constitute a cause of action.

76. The effect and the result of the said decision and order dated February 13, 1973 of the named defendants Appellate Division and Justices was to hold that each of the six causes of action of the complaint was legally insufficient.

77. The effect and the result of the said decision and order dated February 13, 1973 of the said named defendants Appellate Division and Justices was to bind the lower courts on the matter of the sufficiency of each of the six causes of action of the complaint.

78. That the said named defendants failed and omitted to order the dismissal of any of the causes of action set forth in that complaint in the order dated February 13, 1973 (Exhibit 15).

79. That the said failure and omission

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deprived the plaintiff of his right to appeal to the New York Court of Appeals and deprived the plaintiff of his right to have that decision and order reviewed by the New York State Court of Appeals.

80. That the said failure, omission and refusal by the said named defendants Appellate Division and the named Justices thereof was made to deprive the order dated February 13, 1973 of the quality of finality and to deprive the plaintiff of the right to appeal that order to the New York Court of Appeals as of right and to prevent a review of that decision and order by the New York Court of Appeals.

81. That the said order was thereby deprived of the said quality of finality thereby and the plaintiff was thereby prevented from appealing to the New York Court of Appeals.

82. That the said failure and omission and refusal by the named defendants to include in the order dated February 13, 1973 an ordering provision dismissing each or any of the said causes of action alleged in that complaint deprived the plaintiff of his right to due process of law and to the equal protection of the laws in violation of the United States Constitution.

V. Third Claim for Relief Against the Honorable Justice of the Supreme Court of the State of New York, at New York County, Hon. Vincent A. Massi, Chemical Bank, L.F. Dommerich & Co., Inc., Joseph O. Barlow, Irvin Natov.

83. Plaintiff repeats each allegation set forth in

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Paragraphs 1 to 82.

84. That by order to show cause dated January 3, 1973 the defendants, Chemical Bank, L. F. Dommerich & Co., Inc., Joseph O. Barlow and Irvin Natov, in the aforesaid attachment action described in Paragraph 3 above, moved for an order extending their time to answer the complaint (Exhibit 21).

85. The said named defendants, Chemical Bank, Dommerich, Barlow and Natov had theretofore been personally served with a copy of the summons and complaint (Exhibit 3) in the attachment action.

86. The entire prayer for relief demanded in that order to show cause dated January 3, 1973 (Exhibit 21) was as follows:

*

"Why an order should not be made and entered herein pursuant to Article 31 CPLR and CPLR 2004 extending the above named defendants' time to answer or to move with respect to the verified complaint until ten (10) days after plaintiff has appeared for the taking of his deposition upon oral questions and such deposition has been concluded" (Exhibit 21).

87. There was no general prayer for relief set forth in that order to show cause dated January 3, 1973 (Exhibit 21).

88. The said motion by defendants, Chemical Bank, Dommerich, Barlow and Natov, was not joined to, nor was it

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heard together with any other motion by any other defendant in that attachment action.

89. The defendants, Chemical Bank, Dommerich, Barlow and Natov had made that motion to extend their time to answer as a device and tactic by which they planned to serve the plaintiff with a notice for oral deposition before these defendants were required to answer.

90. The said defendants, Chemical Bank, Dommerich, Barlow and Natov had theretofore failed to timely and properly serve a notice of deposition on the plaintiff to entitle them to have an oral deposition of the plaintiff prior to answer under New York Civil Practice Law and Rules.

91. The plaintiff opposed the motion for an extension of time to answer by said defendants on the grounds, among others, that the motion was not brought in good faith, that the defendants had had the complaint for almost four months and did not need the time to prepare an answer.

92. Thereafter the said Hon. Supreme Court Justice Vincent A. Massi, rendered the following order dated February 23, 1973 and entered February 26, 1973 in the Office of the Clerk of the New York County Supreme Court:

"Upon the foregoing papers, this motion to extend time to answer until 10 days after the taking of an oral deposition is granted to the extent of dismissing the complaint with leave to plaintiff (sic) to serve an amended complaint within 30 days after service of a copy of this order with notice of entry. This is one of several motions addressed to the complaint separately made by defendants. The objections to the complaint are fully justified. As to the corporate

COMPLAINT

plaintiff, the complaint fails to comply with Section 626(c) of the General Corporation Law and Rule 3015 (b) of the CPLR. With respect to the complaint as a whole, the allegations are so vague and ambiguous that none of the defendants may reasonably be expected to answer. If the plaintiffs avail themselves of the leave granted, the amended complaint should cure the defects indicated and contain a clear, concise and definite statement specifying the manner and extent of each defendant's participation in the claimed wrong perpetrated upon the plaintiffs." (Exhibit 22)

93. The defendants, Chemical Bank, Dommerich, Barlow and Natov, did not make any motion pursuant to CPLR, Section 3024(a) on the ground that:

"If a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a response, he may move for a more definite statement."

94. Dismissal of a complaint under CPLR, Section 3024(a) is not authorized.

95. The rule of law in the State of New York in regard to the complaint as a pleading is that all motions under CPLR Section 302^b must be discouraged and if made, must be denied unless the pleading is so defective that the transaction cannot be identified and that the substantial rights of the party are prejudice, and that the burden of proving these conditions is on the party making the claim.

96. The defendant, Regal Advertising Associates, Inc., had already served a verified answer in December, 1972.

97. The defendant, Regal Advertising Associates, Inc., made no motion directed against the complaint alleging

COMPLAINT

that the complaint was "vague and ambiguous", or that the complaint allegedly failed to comply with General Corporation Law, Section 626, or that the complaint failed to comply with CPLR 3015(b).

98. The time of the defendants, Downe Communications, Inc. and Edward R. Downe, Jr., to answer or to make any motions directed against the complaint had expired long prior to the date that the defendant, Chemical Bank, made their said motion.

99. There is no authority or power granted by the New York Civil Practice Law and Rules to any court to dismiss any complaint on the ground "that the allegations are so vague and ambiguous that none of the defendants may be expected to answer" in particular, or on the ground that the allegations of the complaint are "vague and ambiguous".

100. The said Supreme Court Justice, Hon. Vincent A. Massi, had no power and no authority to dismiss the complaint in the said attachment action on the said motion of the defendants, Chemical Bank, Dommerich, Barlow and Natov, to extend their time to answer the complaint.

101. The said Supreme Court Justice, Hon. Vincent A. Massi, did not point out any allegation in that complaint to be "vague and ambiguous."

102. The said Supreme Court Justice, Hon. Vincent A.

COMPLAINT

Massi, erred by his failure to recognize that there was only one plaintiff, namely, Al Dayon, who was suing both individually and on behalf of Mastercraft Electronics Corp., and not two plaintiffs, the individual Al Dayon and the corporation Mastercraft Electronics Corp., as the caption and the complaint plainly and clearly show.

103. General Corporation Law, Section 626 clearly does not apply to that complaint because the corporation, Mastercraft Electronics Corp., is not a party plaintiff.

104. The said complaint, nonetheless, alleged facts showing that the defendants, Downe Communications, Inc. (and Edward R. Downe, Jr.) had taken actual physical control of Mastercraft Electronics Corp. by actual stockholdings and Board of Director control, by actual physical control of the assets and offices of Mastercraft Electronics Corp., by misappropriating the assets and property of Mastercraft Electronics Corp. to their own benefit and by actually putting Mastercraft Electronics Corp. out of business and closing it down) as set forth in the complaint at paragraphs 18, 24, 34, 41, 42, 60, 62, 63, 69, 75, 76, 80, 81, 82, 83, 89, 97 and 98.

105. That the complaint showed by allegations of fact, even if Mastercraft Electronics Corp. had been a party plaintiff, which it was not, that application to the Board of Directors of Mastercraft which was in the hands of the wrongdoers, the defendants, Downe Communications, Inc., to bring action to

COMPLAINT

vindicate the rights of Mastercraft Electronics Corp. was useless and thus, General Corporation Law, Section 626(c) was fully complied with as to those causes of action alleged on behalf of Mastercraft Electronics Corp.

106. That the complaint alleged three causes of action on behalf of Al Dayon, individually as to which in no possible way or manner could anyone even suggest that General Corporation Law, Section 626(c) could apply to those causes of action.

107. CPLR Section 3015(b) provides:

"Where any party is a corporation, the complaint shall so state, and where known, it shall specify the state, country or government by or under whose laws the party was created."

108. That CPLR Section 3015(b) does not apply to the said complaint in the attachment action described in Paragraph 3 above.

109. The aforesaid order of the said Supreme Court of the State of New York, New York County, by Hon. Vincent A. Massi, dated February 23, 1973 (Exhibit 22) is illegal, null and void and deprived the plaintiff of his right to due process of law and to the equal protection of the law under the United States Constitution.

110. The said order dated February 23, 1973 dis-

COMPLAINT

missing the complaint was made without notice to the plaintiff and without an opportunity to oppose the same.

VI. Fourth Claim for Relief

111. Plaintiff repeats each allegation set forth in Paragraphs

112. The plaintiff declined to amend the complaint.

113. That the plaintiff duly and timely appealed to the Supreme Court, Appellate Division, First Department, from the said order dated February 23, 1973.

114. A judgment dismissing the complaint "on the merits" was made on March 13, 1973 by the said Supreme Court, New York County, by Hon. Vincent A. Massi, Justice.

115. The plaintiff duly served and filed a notice of appeal to the New York Court of Appeals from the said judgment dated March 13, 1973.

116. The defendants moved in the Supreme Court Appellate Division, First Department to dismiss the appeal from the said order dated February 23, 1973.

117. The plaintiff duly opposed the said motion.

118. The defendants, Supreme Court, Appellate Division, First Department, by the Hon. Justices of said

COMPLAINT

Court dismissed the appeal from the said order dated February 23, 1973 on the ground that the order was "superseded" by the judgment dated March 13, 1973 and would not review the order on the merits.

119. That in fact and in law the order dated February 26, 1973 was not superseded by the judgment dated March 15, 1973.

120. That the said order dated February 26, 1973 was appealable and reviewable as of right under New York Civil Practice Law and Rules.

WHEREFORE, plaintiff demands judgment:

1. Annuling the order dated February 13, 1973 of the New York State Supreme Court Appellate Division, Second Department (Exhibit 15) in the attachment action described in Paragraph 3 herein.

2. Declaring that the affidavit of Al Dayon sworn to August 12, 1972 and the complaint verified August 12, 1972 considered as an affidavit sufficiently show that the plaintiff has a cause of action against Downe Communications, Inc. and that the order of attachment dated August 14, 1972 is valid and may not be vacated.

3. Declaring that the complaint verified August 12, 1972 is legally sufficient as a pleading and that

COMPLAINT

each cause of action therein states facts sufficient to constitute a cause of action and that neither the complaint, nor any of the causes of action alleged therein may be dismissed as insufficient in law as a pleading.

4. Annuling all actions and proceedings by any defendant based directly or indirectly, upon the order of the New York State Supreme Court Appellate Division, Second Department dated February 13, 1973.

5. Other and further relief to the plaintiff as may be just and proper.

Charles Sutton
CHARLES SUTTON
Attorney for Plaintiff
299 Broadway
New York, N.Y. 10007
212 - 964 8612

Dated: October , 1974.

COMPLAINT

VERIFICATION

STATE OF NEW YORK

COUNTY OF

AL DAYON, being duly sworn, deposes and says that deponent is the plaintiff in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Al Dayon

Sworn to before me this

3 day of October, 1974.

NOTARY PUBLIC STATE OF NEW YORK
No. 30-7421350
Qualified in Nassau County 76
Commission Expires March 31, 1976

EXHIBIT 1 - DAYON ORDER OF ATTACHMENT

At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of Bronx, at the Courthouse, Grand Concourse, Bronx, New York, on the 14th day of August, 1972.

P R E S E N T :

HON. GEORGE POSTEL,
Justice.

-----X

AL DAYON, Individually and on behalf
of Mastercraft Electronics Corp.,

Plaintiff,

-against-

Downe Communications, Inc., ORDER OF
Edward R. Downe, Jr., The Chemical

Bank, L.F. Dommerich Co., Inc., Joseph ATTACHMENT

O. Barlow, Irwin Natov, Eric H. Javits,

Regal Advertising Associates Corp., Campbell- Index # 15225/72
Reynolds, Inc., Alexander Sales Corporation, John
Doe, Richard Roe and Richard Roe, Inc., The Last
Three Names Being Fictitious, The True Names
Being Presently Unknown.,

Defendants.

-----X

An application having been duly made by the plaintiff
for an order of attachment against the property of the defendants
Downe Communications, Inc. and Edward R. Downe, Jr.

NOW, upon reading and filing the summons and verified
complaint, sworn to the 11th day of August, 1972, and the affidavit
of AL DAYON, sworn to the 11th day of August, 1972, wherein
it appears that a cause of action for a money judgment exists
in favor of the plaintiff against the defendants for the sum
stated in the said affidavit of Al Dayon, and that the plaintiff

DAYON ORDER OF ATTACHMENT

is entitled to recover said sum over and above all counterclaims known to him and wherein it further appears that the plaintiff is entitled to an order of attachment against the property of the named defendants; it is

ORDERED, that the plaintiff's undertaking be and the same hereby is fixed in the sum of FIVE (5%) PerCent of the amount to be attached is conditioned as to 2½ % that the plaintiff will pay to the named defendants all legal costs and damages which may be sustained by reason of the attachment as ascertained and determined by the Court, if the named defendants recover judgment, or if it is finally determined by the Court that the plaintiff, after the attachment is effected, that he was not entitled to the attachment of the named respective defendant's property, and the balance conditioned that the plaintiff will pay to the Sheriff all of his allowable fees, and it is further

ORDERED, upon proof of filing the necessary bond approved herein that the Sheriff of the City of New York, or the Sheriff of any County of the State of New York, levy within his jurisdiction at any time before final judgment, upon such property in which the above named defendants Downe Communications, Inc. and Edward R. Downe, Jr. have an interest and upon such debts owing to said named defendants, or either of them as will satisfy the plaintiff's demand for Two Million (\$2,000,000.00) Dollars, together with probable interst, costs, and Sheriff's fees and expenses, and that he proceed hereon in the manner required by law.

ENTER

/s/ G.P.
U.S.C.

AFFIDAVIT OF AL DAYON

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

- - - - -x
AL DAYON, Individually and on
Behalf of MASTER-CRAFT ELECTRONICS CORP.,

Plaintiff,

- against -

PLAINTIFF'S AFFIDAVIT

INDEX NO.

DOWNE COMMUNICATIONS, INC.,
EDWARD R. DOWNE, JR.,
THE CHEMICAL BANK,
L. F. DOLEMERICH CO., INC.,
JOSEPH O. BARLOW, IZVIN NATOV,
ERIC H. JAVITS, REGAL ADVERTISING
ASSOCIATES CORP., CAMPBELL-REYNOLDS, INC.,
ALEXANDER SALES CORPORATION, JOHN BOE,
RICHARD POE, and RICHARD ROE, INC., the
Last Three names being fictitious, the
true names being presently unknown,

Defendants.

- - - - -x
STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

AL DAYON , being duly sworn deposes and says :

1. I am the person named as the plaintiff in this action
and I am familiar with the facts herein.

2. This affidavit is submitted in support of my applica-
tion for an attachment against the defendants EDWARD R. DOWNE, JR.
and DOWNE COMMUNICATIONS, INC..

3. This is an action for damages for fraud , for deceit,
for fraud in contracting and incurring liability complained of, for
damages, for misappropriation of corporate property, waste and others.

4. The defendant DOWNE COMMUNICATIONS, INC. is a foreign
corporation having been organized and existing under the laws of the
State of Delaware.

5. Defendant, EDWARD R. DOWNE, JR., at all the times complained of, was and still is the chief executive officer, director and major stockholder of DOWNE COMMUNICATIONS, INC. He is one of the master minds of the scheme, plan and conspiracy herein described and also set forth in the complaint.

6. Defendant, ERIC H. JAVITS is an attorney. He was and still is an attorney for defendant, DOWNE COMMUNICATIONS, INC. and defendant, EDWARD R. DOWNE, JR., as well as a director and stockholder of defendant, DOWNE COMMUNICATIONS, INC. This defendant actively aided, abetted and procured and conceived the plan, scheme and conspiracy by the defendant, EDWARD R. DOWNE, DOWNE COMMUNICATIONS and others and the commission of the fraud against MASTER-CRAFT ELECTRONICS CORP. and against me, not only as an active participant in the planning and promotion of the fraudulent schemes, but in their execution. Defendant, CHEMICAL BANK and defendant, L. F. DOMMERICH, INC., which is either owned or totally controlled by the defendant, CHEMICAL BANK, knowingly and willfully acted with and aided and abetted the defendant, EDWARD R. DOWNE, JR., DOWNE COMMUNICATIONS, INC. and ERIC JAVITS in the fraudulent plan, scheme and conspiracy to take over the control and possession of the property and business of MASTER-CRAFT ELECTRONICS CORP. and all of the shares of stock of MASTER-CRAFT ELECTRONICS CORP. owned by me in order to benefit themselves and to manipulate, inflate and increase the price of the shares of stock of DOWNE COMMUNICATIONS, INC. Defendant, CHEMICAL BANK and defendant, L. F. DOMMERICH CO., INC., acted through their officers, defendants, JOSEPH O. BARLOW and IRWIN NATOV, who knowingly and actively participated in the plan, scheme and conspiracy and in the conduct with the defendants, EDWARD R. DOWNE, JR., DOWNE COMMUNICATIONS, INC. and ERIC H. JAVITS, to threaten me and to force me to accede to the demands of

AFFIDAVIT OF AL DAYON
these defendants to transfer and assign to DOWNE COMMUNICATIONS,
INC. all of my shares of stock of MASTERCRAFT ELECTRONICS CORP.
which unless I did that the defendants, CHEMICAL BANK and L. F.
DOMMERICH CO., INC. would immediately cut off all money and credit
to MASTER-CRAFT, would call in all outstanding debts and obligations
of MASTER-CRAFT and of myself and would go after me personally for
the alleged debts of MASTER-CRAFT to them and would thus, effec-
tively, put MASTER-CRAFT out of business and render my stock value-
less.

7. Defendant, CAMPBELL-REYNOLDS, INC. was and still is
a subsidiary of DOWNE COMMUNICATIONS and was and still is wholly
within the control of EDWARD R. DOWNE, JR. and DOWNE COMMUNICATIONS
INC. This corporation acted as a so-called advertising represen-
tative for advertising placed in magazines owned or controlled by
DOWNE COMMUNICATIONS, INC. Through this device the defendant,
DOWNE COMMUNICATIONS, INC. was and is able to obtain an extra fee
for advertising placed in its magazine.

8. The defendant, REGAL ADVERTISING ASSOCIATES CORP. was
and still is a subsidiary of DOWNE COMMUNICATIONS and is controlled
directly or indirectly by defendants, EDWARD R. DOWNE, JR. and
DOWNE COMMUNICATIONS, INC. This corporation, like CAMPBELL-REYNOLDS,
INC. performed the function of providing a vehicle through which
additional fees and charges could be applied to an advertiser seek-
ing to use advertising space in magazines owned by defendant, DOWNE
COMMUNICATIONS, INC.

9. Defendant, DOWNE COMMUNICATIONS, INC., at the times
complained of, owned at least three important magazines for ad-
vertising purposes, namely, The Ladies Home Journal, American Home,
and Family Weekly. These magazines had a claimed combined circu-
lation of about 18,000,000.

AFFIDAVIT OF AL DAYON

10. The defendant, ALEXANDER SALES CORPORATION was and is a mail order sales company which was being acquired or had been acquired by defendant, DOWNE COMMUNICATIONS as of 1970.

ALEXANDER SALES CORPORATION was a willing and active participant with defendants, DOWNE COMMUNICATIONS, INC., EDWARD R. DOWNE and ERIC M. JAVITS in the plan, scheme and conspiracy to take over control and possession of the corporate structure, the business, the assets and property of MASTER-CRAFT and of my shares of stock in MASTER-CRAFT.

11. MASTER-CRAFT ELECTRONICS CORP. at the times involved was a successful and upcoming importer and in the nature of things, manufacturer through manufacturers in Japan and neighboring areas of radios, digital clocks, tape recorders, phonographs, and other electronic and household goods.

12. In 1968, MASTER-CRAFT which was a public corporation had issued and outstanding, over 7,000,000 shares of stock of which your deponent owned and held 3,278,000 shares.

13. When MASTER-CRAFT stock was trading over the counter the shares were traded at various times in 1968-1969 between \$8 and \$9 per share to \$4, \$5 and \$6 per share.

14. It appears that in the late '60's the defendants, DOWNE COMMUNICATIONS, INC., EDWARD R. DOWNE, JR., and ERIC M. JAVITS, devised a plan, scheme and conspiracy whereby they could manipulate, inflate and increase the price of stock of DOWNE COMMUNICATIONS, INC. by inflating the balance sheet and asset value of DOWNE COMMUNICATIONS, INC. without any actual cost or cash disbursement to the corporation by the device of using advertising space in their publication as the gimmick to acquire shares of stock of other corporations who sought to advertise their goods or services and by this means to put their foot into the door

AFFIDAVIT OF AL DAYON

to acquire control of those corporations. The plan by these defendants was to take the stocks of various advertiser corporations in exchange for future advertising space commitments by DOWNE COMMUNICATIONS, INC., in its magazines, but after acquiring the stocks of the advertiser corporations and using those stocks to manipulate and inflate the price of the stock of DOWNE COMMUNICATIONS, INC., and to increase the balance sheet asset value of DOWNE COMMUNICATIONS, INC., these defendants planned and intended not to deliver the promised advertising space.

Neither I nor MASTER-CRAFT knew of these intentions of these defendants at the time that MASTER-CRAFT entered into its agreement with DOWNE COMMUNICATIONS, INC., REGAL ADVERTISING ASSOCIATES, CORP., AND CAMPBELL-REYNOLDS, INC. by the agreement dated December 26, 1968.

We learned of this after the defendants had accomplished their purpose and scheme. We also learned after the defendants had accomplished their purpose and scheme against MASTER-CRAFT and against myself that these defendants perpetrated this scheme on more than six other advertiser corporations and possibly eight or ten such corporations both before and after these defendants had perpetrated their plan and scheme on MASTER-CRAFT.

15. On December 26, 1968 the defendant, DOWNE COMMUNICATIONS, INC. entered into an agreement with MASTER-CRAFT for an exchange of 1,333,333 shares of stock of MASTER-CRAFT for \$3,000,000 worth of advertising space in any magazine owned by DOWNE COMMUNICATIONS, INC. or any of its subsidiaries during the future period of January 1, 1969 to December 31, 1972. These shares of stock which were paid to DOWNE COMMUNICATIONS, INC. and to REGAL and to CAMPBELL-REYNOLDS were unregistered stock and were accepted as

AFFIDAVIT OF AL DAYON

unregistered stock. A true copy of the agreement dated December 26, 1968 is attached hereto. MASTER-CRAFT immediately and fully paid to DOWNE COMMUNICATIONS, INC., to REGAL and to CAMPBELL the full contract price in shares of its stock for the \$2,000,000 worth of advertising space from DOWNE COMMUNICATIONS.

Thus, as far as MASTER-CRAFT was concerned it fully paid the consideration required for the \$2,000,000 advertising space due from DOWNE COMMUNICATIONS as well as for the services of REGAL and CAMPBELL. These defendants, DOWNE COMMUNICATIONS, ERIC H. JAVITS, EDWARD R. DOWNE, REGAL and CAMPBELL had no intention of delivering all of that \$2,000,000 worth of advertising space to MASTER-CRAFT.

16. On the other hand, defendant, DOWNE COMMUNICATIONS took over the shares of stock of MASTER-CRAFT and reflected the value of these shares in its annual report to stockholders. As a result the price and value of DOWNE COMMUNICATIONS' stock increased. reflection of the acquisition of MASTER-CRAFT's shares of stock.

Defendants, DOWNE COMMUNICATIONS, REGAL and CAMPBELL in the period 1969 processed only about \$250,000 worth of advertising for MASTER-CRAFT. After that, they failed and refused to furnish and deliver any other advertising due MASTER-CRAFT.

17. About January, 1970, the defendant EDWARD R. DOWNE, JR., contacted me and told me that he wanted to take over MASTER-CRAFT and that he wanted to do so by taking over my shares of stock in MASTER-CRAFT. I told him I was not interested. He told me that it was his intention in taking over MASTER-CRAFT to merge it with ALEXANDER SALES CORPORATION which was a mail order sales house and that ALEXANDER SALES CORPORATION would be the surviving corporation.

AFFIDAVIT OF AL DAYON

He said to me that he intended to take back the advertising space that had been committed to MASTER-CRAFT and that he intended to give that space to ALEXANDER SALES CORPORATION. He never had any intention of letting MASTER-CRAFT keep that advertising space or use it.

18. The defendant, EDWARD R. DOWNIE, JR., persisted in his demands upon me over a period of some ten or twelve meetings. I persisted in rejecting his demands. MASTER-CRAFT was a growing corporation and there were, in my opinion, great opportunities there. The defendant, EDWARD R. DOWNIE, JR., made it clear that he wanted to take back not only the advertising space but also to take over all of the business and assets and inventory and mailing lists of MASTER-CRAFT.

19. After the last meeting with EDWARD R. DOWNIE, JR., I was called over to the office of defendant, IRWIN NATOV, who was an officer of Chemical Bank and Chairman of the Board of L. F. DOMMERICH CO., INC. Defendant, JAMES O. BARLOW, who was also an officer of Chemical Bank, was present. They both spoke to me about my taking the deal offered by Mr. DOWNIE. I asked them how did they know about it. They said they just know about it, that Mr. DOWNIE is an important customer of the bank. They said to me that they were there to tell me to take the deal that Mr. DOWNIE offered. I told them that if I did, he would be stealing my company and I don't want to give it up. I told them that I don't like the deal. Mr. NATOV and Mr. BARLOW both told me that I don't have any choice. They said that they had instructions from higher-ups at Chemical Bank that they must tell me that MASTER-CRAFT would not get any money if I don't take the deal. I told them again that I didn't like the deal and I won't take it. They said to me

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that they were instructed by higher-ups at Chemical Bank that on Friday of that week, they would give no money to MASTER-CRAFT to meet its payroll or for any other reasons and that they would immediately stop all dealings with MASTER-CRAFT and call in all the obligations of MASTER-CRAFT and go after me personally for the obligations of MASTER-CRAFT to the bank unless I accepted the deal immediately from Mr. DOWNE. I had no choice. MASTER-CRAFT would go out of business and a lot of people would be hurt. I told them that under the circumstances, I would have to take the deal.

20. A short time thereafter, I was presented by the attorneys for DOWNE COMMUNICATIONS with a letter agreement dated February 19, 1970 and with forms for the assignment of all of my 3,278,000 shares of stock in MASTER-CRAFT to DOWNE COMMUNICATIONS together with an irrevocable proxy statement covering all of my shares of stock in MASTER-CRAFT to DOWNE COMMUNICATIONS and with a form for my resignation as Chairman of the Board of Directors of MASTERCRAFT. I signed all of these papers. Present at the time were Mr. BARLOW, ~~Mr. ██████████~~ from the Chemical Bank, Mr. RAU representing EDWARD R. DOWNE, JR., and DOWNE COMMUNICATIONS and an attorney representing DOWNE COMMUNICATIONS. After I signed the papers, I was compelled to deliver over to DOWNE COMMUNICATIONS all of my office keys and my credit cards, I was compelled to remove my personal property from the business premises of MASTER-CRAFT and I was forced physically out of MASTER-CRAFT CORPORATION with instructions not to come back except with a written authorization of DOWNE COMMUNICATIONS. The defendants then changed the lock on the office of MASTER-CRAFT and they took over possession and control of MASTER-CRAFT, its business, its assets, its property, its inventory; everything lock, stock and barrel. There was at the time

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some \$500,000 worth of merchandise at the warehouse of MASTER-CRAFT at 149 Fifth Avenue, New York City; there was some \$300,000 in accounts receivable, office equipment, industrial molds, office furniture, business machines and lease of office premises in MASTER-CRAFT. There was also a video tape recorder which was in the process of development which, in my opinion, was a phenomenal marketing product. All of these were taken over by the defendants and have been misappropriated, wasted, sold or otherwise disposed of to the damage of MASTER-CRAFT and myself.

21. According to the February 19, 1970 agreement, I was to receive one (1) share of ALEXANDER SALES CORPORATION stock after the merger with MASTER-CRAFT for every five (5) shares of my 3,278,000 shares of MASTER-CRAFT. However, the defendant, EDWARD R. DOWNE, JR., DOWNE COMMUNICATIONS, INC. and ERIC M. JAVITS had no intention of giving me any shares of stock in ALEXANDER SALES CORPORATION and they never did.

22. These defendants falsely contracted in the February 19, 1970 agreement that they were going to merge MASTER-CRAFT into ALEXANDER SALES and give me one (1) share of ALEXANDER SALES CORPORATION stock for every five (5) shares of MASTER-CRAFT stock that I turned over to them. They never did. I never got any shares of stock in ALEXANDER SALES CORPORATION. These defendants, in fact, had no intention of giving me any shares of stock in ALEXANDER SALES CORPORATION and they never did, and they also had no intention of merging MASTER-CRAFT into ALEXANDER SALES CORPORATION and they never did. That contract dated February 19, 1970, was solely and totally for the purpose of taking over my shares of stock in MASTER-CRAFT and thus to take over the business and assets and property of MASTER-CRAFT, which they did. MASTER-CRAFT stock at that time had a value per share of some \$3 or \$4, thus making my loss some \$10,000,000.

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23. After these defendants has taken over my shares of stock in MASTER-CRAFT and my resignation as Chairman of the Board of MASTER-CRAFT, and after having locked me out of MASTER-CRAFT offices, they continued with their original plan and scheme of not furnishing the advertising space to MASTER-CRAFT which they had contracted to furnish by the agreement dated December 26, 1968. They did this in two ways. First, they stripped the corporation of all of its assets; they took its mailing lists, its accounts receivable, its inventory and everything else of value, they stopped MASTER-CRAFT from doing business and put it out of business. With themselves in full and complete control of the corporate structure and in full and complete possession of all of its property, business and assets, they went through the motion of "cancelling" the advertising contract dated December 26, 1968 with MASTER-CRAFT. This latter bit of scheming was a prize by itself.

Further - The advertising space agreement dated December 26, 1968 had a provision in regard to filing a registration statement for the 1,333,333 shares of stock of MASTER-CRAFT which MASTER-CRAFT gave to DOWNE COMMUNICATIONS, REGAL and CAMPBELL for the \$2,000,000 of advertising space. Now that provision was absolutely not any condition of the transaction. It should be remembered that since February, 1970 these defendants, through DOWNE COMMUNICATIONS, had control of the corporate structure of MASTER-CRAFT and had physical possession of all of its business, property and assets, etc. The total number of shares of stock owned by DOWNE COMMUNICATIONS or effectively controlled by it was some 4,611,333 shares of MASTER-CRAFT stock which was more than 60% of all of the issued and outstanding shares of MASTER-CRAFT stock. In this position, what MASTER-CRAFT did or failed to do was wholly within the control of

DOWNE COMMUNICATIONS, EDWARD R. DOWNE, JR. and ERIC M. JAVITS. In this position these defendants willfully and knowingly failed and refused to register their own stock in MASTER-CRAFT. Using their own willful and knowing refusal to register that stock by letter dated June 4, 1970, DOWNE COMMUNICATIONS, INC., purported to write a letter to MASTER-CRAFT which, at that time it owned and controlled and had physical possession thereof, to wit: "Reference is made to our earlier letters of May 14, 1970 and May 25 1970. Not having heard from you with respect to the registration of the shares of common stock of MASTER-CRAFT ELECTRONICS CORP. ("MASTER-CRAFT") owned by DOWNE COMMUNICATIONS, INC. ("DOWNE") and having determined that no such registration was made, we consider you in breach of the agreement between MASTER-CRAFT, DOWNE, REGAL ADVERTISING ASSOCIATES CORP., and CAMPBELL-REYNOLDS, INC., dated the 26th of December, 1968, and therefore, advise you that we have no further obligation under that contract. Sincerely, signed EDWARD DOWNE". A copy of that letter is attached hereto.

24. The fraud which these defendants have perpetrated upon your deponent and upon MASTER-CRAFT is gross and reprehensible. Such rapacious business tactics must not be permitted to occur without a remedy.

An attachment in the amount of \$2,000,000 is respectfully demanded against the defendants, DOWNE COMMUNICATIONS, INC., and EDWARD R. DOWNE, JR.

25. As shown by the verified complaint attached hereto, the plaintiff is entitled to recover and can fairly and adequately prove at the very least damages in the amount of \$2,000,000 and more.

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26. Prior to the commencement of this action in this Court, an action had been commenced in the United States District Court in the southern states of New York. That suit in substance was similar to that which has been presented to this Court. That suit was dismissed on consent of the plaintiff solely on jurisdictional grounds that there was no diversity of citizenship in that action so as to give jurisdiction to that Federal Court.

In regard to that Federal Court suit, DOWNE COMMUNICATIONS, INC., in a prospectus dated June 14, 1972, involving the sale of 1,789,091 shares of stock of DOWNE COMMUNICATIONS, INC. on a secondary offering of such shares with an over the counter price of \$10.87 $\frac{1}{2}$ as of June 13, 1972, wrote that based upon an opinion of their attorney, JAVITS & JAVITS, ESQ., that "such claim will not result in a judgment that would have a material adverse affect on the company".

27. It is clear that the defendant, DOWNE COMMUNICATIONS, INC., a foreign corporation by its own declaration would not be as materially affected by this lawsuit and therefore, by this attachment. On the other hand, this attachment is necessary and proper in this action.

28. That the plaintiff is entitled to recover, individually and on behalf of MASTER-CRAFT, respectively, the sum of \$3,000,000 over and above all counter-claims by any of the defendants named in this action, known to him.

29. No previous application has been made for the relief requested herein.

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Statement, ¶ 30. DOWNE COMMUNICATIONS, INC. has substantial assets in the City of New York, which include a right to a revolving credit of \$9,000,000.00 with the Bank of New York and First National City Bank. DOWNE COMMUNICATIONS, INC. has pledged with the Banks the capital stock of substantially all of its subsidiaries including approximately 40% of the issued and outstanding common stock, Bartell Media Corporation.

¶ 31. Upon information and belief, based on information published by DOWNE COMMUNICATIONS, INC. in its prospectus, dated June 14, 1972, it maintains a net consolidated tangible worth of not less than \$11,000,000.00 and a consolidated working capital of not less than \$9,000,000.00. It claims to have as of March 31, 1972 a consolidated tangible net worth of \$12,898,000.00 and consolidated working capital of \$9,322,000.00.

¶ 32. The defendant, DOWNE COMMUNICATIONS, INC. owns leases at 641 Lexington Avenue, New York, New York, which produce annual income in excess of \$250,000.00.

¶ 33. The defendant, EDWARD R. DOWNE, JR. is in the process of selling 450,000 shares of DOWNE COMMUNICATIONS, INC. stock during the week of August 14, 1972. The approximate market price of the stock was \$10 5/8 over the counter, as reported.

¶ 34. The prospects are that defendant, R. DOWNE, JR. will obtain gross proceeds from that sale in excess of \$4,000,000. One of the brokers-underwriters is Merrill, Lynch, Pearce, Fenner & Smith, Inc.

¶ 35. Defendant, DOWNE COMMUNICATIONS, INC. has in its possession also 1000 shares of Treasury stock, 370,375 shares reserved for issuance of qualified stock option plans, and over 200,000 shares for employee and other stock option plans. These

AFFIDAVIT OF AL DAYON

shares, if valued at \$10.00 per shares, represent \$5,713,750.00, and are believed to be located at 641 Lexington Avenue, New York, New York and within the control of that Corporation.

36. The counsel to defendant, DOWNE COMMUNICATIONS, INC. has written in the prospectus of that defendant upon the sale of 1,789,009 shares of stock of that company, on a secondary offering, as of June 14, 1972, at which it was reported that the price of each share was quoted at \$10.87 $\frac{1}{4}$, that the claims of this plaintiff, which were then pending in Federal Court,

"will not result in a judgment that would have a material adverse affect on the Company."

37. The attorneys for the defendant, DOWNE COMMUNICATIONS, INC., having regarded \$35,000,000.00 as one which would not "have a material adverse affect on the Company", would similarly hold that a \$2,000,000.00 attachment would not have even a nominal affect on the Company relatively.

38. In another case in this Department the Supreme Court had authorized a warrant of attachment in the amount of \$1,726,721.73 upon an initial bond of \$15,000.00 and later had the bond increased by \$35,000.00 (Subin v. U.S. Fidelity & G. Co., 208 N.Y.S. 2d 278, 12 A.D. 2d 49).

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39. It is urged that in view of the defendants's own attorney's opinion that the plaintiff's claims of \$35,000,000 could not have a material adverse affect upon the defendant, that a bond in the amount of \$5,000.00 be authorized with leave to the defendants to apply for an increase in the amount of the bond upon a proper showing.

40. It is alternatively, urged, that a bond in an amount of 1.5% of the amount attached be required as a condition of attachment of sums up to \$2,000,000.00.

Al Dayon

AL DAYON

Sworn to before me this
11 day of August, 1972

NOTARY PUBLIC
STATE OF NEW YORK
My Commission Expires April 1, 1973
J. S. GOLDBECK, Notary Public
Notary Public No. 11-12-123456789

VERIFIED COMPLAINT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

- - - - - x
Al Bayon, Individually and on Behalf
of Master-Craft Electronics Corp.,

Plaintiff,

- against -

Downe Communications, Inc.,
Edward R. Downe, Jr.,
The Chemical Bank
L. F. Dommarich Co., Inc.,
Joseph O. Barlow, Irwin Natov,
Eric M. Javits, Regal Advertising
Associates Corp., Campbell-Reynolds, Inc.,
Alexander Sales Corporation, John Doe,
Richard Roe, and Richard Roe, Inc.,
The Last Three Names Being Fictitious,
The True Names Being Presently Unknown,

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INDEX NO.

Defendants.

- - - - - x
Plaintiff, by Charles Sutton, Esq., his attorney, as and
for his complaint, alleges:-

FIRST CAUSE OF ACTION AGAINST DEFENDANTS
DOWNE COMMUNICATIONS, EDWARD R. DOWNE, JR.,
REGAL ADVERTISING ASSOCIATES CORP., CAMPBELL-
REYNOLDS, INC. and ERIC M. JAVITS:

FIRST: The defendant Downe Communications, Inc., is a
foreign corporation, organized and existing under the laws of the
State of Delaware.

SECOND: The defendant Chemical Bank is a domestic
banking corporation, having offices for the transaction of busi-
ness and transacting its business in the County of Bronx, City and
State of New York.

VERIFIED COMPLAINT

TENTH: That the defendant Alexander Sales Corporation is a domestic corporation, having a merchandising and sales company dealing primarily in a mail order business and which has a close working and corporate relationship with defendants Downe Communications and Downe and is owned or controlled by defendants Downe Communications and Downe.

ELEVENTH: That defendant Eric M. Javits, hereinafter referred to as Javits, at all times herein mentioned, was and still is an attorney duly admitted to practice law in the State of New York, a stockholder, officer and director, and attorney for defendant Downe Communications and Downe.

TWELFTH: That defendant L. F. Dommerich & Co., Inc., was at the times herein mentioned a domestic corporation in the business of financing, factoring, and money-lending.

THIRTEENTH: That at all times herein mentioned, defendant Chemical Bank owned or controlled defendant L. F. Dommerich Co., Inc.

FOURTEENTH: That at all times herein mentioned, the defendant James O. Barlow, hereinafter referred to as Barlow, was an officer, to wit: a vice president, of defendant Chemical Bank.

FIFTEENTH: That at all times herein mentioned, the defendant Irwin Natov, hereinafter referred to as Natov, was an officer of defendant Chemical Bank and Chairman of the Board of Directors of defendant L. F. Dommerich Co., Inc.

SIXTEENTH: That at all times herein mentioned, the de-

VERIFIED COMPLAINT

Defendant Downe Communications was, and still is, engaged principally in the publication of three magazines, to wit: Ladies' Home Journal and American Home, which are monthly magazines, and Family Weekly, a weekly magazine which is distributed nationally as a supplement to weekend newspapers.

SEVENTEENTH: That in and about 1968, the defendants Downe Communications, Downe, Campbell, Regal and Javits, entered into a plan, scheme and conspiracy whereby using the aforesaid magazines, Ladies' Home Journal, American Home and Family Weekly, they would offer future advertising space in these magazines to other corporations in exchange for an immediate sale and transfer of shares of stock in those other corporations, with the purpose of inflating the asset value of defendants Downe Communications, Campbell and Regal, and of using those shares of stock to manipulate and to increase the market price and value of the shares of stock of defendants Downe Communications, Campbell and Regal for their own benefit and advantage and with the intent to and purpose to injure and defraud and not to furnish and not to provide those corporations, including Master-Craft with the promised advertising space, in the case of defendant Downe Communications, and with the promised advertising services, in the case of defendants Campbell and Regal.

EIGHTEENTH: That prior to December 26, 1968, the defendants Downe Communications, Downe and Javits represented to plaintiff and Master-Craft that Downe Communications would provide and furnish to Master-Craft advertising space in magazines owned by

VERIFIED COMPLAINT

Downe Communications or any of its subsidiaries, which included Ladies' Home Journal, American Home and Family Weekly, in the amount of Two Million (\$2,000,000.00) Dollars over the period January 1, 1968 to December 31, 1971, in consideration and payment of 1,333,333 shares of common stock of Master-Craft to be paid by Master-Craft as follows: 933,333 shares to defendant Downe Communications, 200,000 shares to defendant Campbell, as magazine representative fee, and 200,000 shares to defendant Regal, as advertising agency fee, at the time of the making of a written contract therefor.

NINETEENTH: That the defendants Downe Communications, Downe and Jevits, represented to plaintiff and Master-Craft that upon such payments by Master-Craft that defendants Downe Communications, Regal and Campbell would perform their said agreement and would furnish and provide Master-Craft with the said advertising space and the said advertising services, respectively, over the period January 1, 1969 to December 31, 1972.

TWENTIETH: That the plaintiff and Master-Craft believed the said representations by said defendants, and relied and acted upon the representations so made by the defendants.

TWENTY-FIRST: That the said representations were made by the said defendants to the plaintiff and Master-Craft with the intent that the plaintiff and Master-Craft should rely and act thereon.

TWENTY-SECOND: That the representations so made were false, in that the said defendants did not intend to perform such agreement and did not intend to furnish and provide Master-Craft

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with the said advertising space and with the said advertising services, respectively, over the period January 1, 1969 to December 31, 1972 after the defendants Downe Communications, Regal, and Campbell had obtained title to and possession of the said respective shares of stock of Master-Craft from Master-Craft.

TWENTY-THIRD: That the representations by the said defendants were so made to the plaintiff and Master-Craft to induce the plaintiff to cause Master-Craft and to induce Master-Craft to enter into the agreement, dated December 26, 1968, and to pay the said considerations therefor, namely to transfer and convey and deliver title and possession of the said shares of stock of Master-Craft to said defendants as part of the said plan, scheme and conspiracy of said defendants.

TWENTY-FOURTH: That as a result of the false representations of the defendants to the plaintiff and to Master-Craft, the plaintiff caused and induced Master-Craft to enter into the said agreement, dated December 26, 1968, and Master-Craft entered into said agreement dated December 26, 1968 and paid to the said defendants the said 1,333,333 shares of stock of Master-Craft, as hereinabove described, which it would not have done had it not been for the said false representations of the said defendants.

TWENTY-FIFTH: That on or about December 26, 1968, the defendants Downe Communications, Regal, and Campbell, entered into an agreement with Master-Craft, wherein and whereby the said defendant Downe Communications agreed to sell and furnish to Master-Craft Two Million (\$2,000,000.00) Dollars of advertising space in any magazine owned by defendant Downe Communications during the

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period January 1, 1969 to December 31, 1972, for the price of One Million Three Hundred Thirty-Three Thousand Three Hundred Thirty-Three (1,333,333) shares of stock of Master-Craft to be paid as follows: 933,333 shares to be paid to Downe Communications, 200,000 shares to be paid to defendant Regal, as advertising agency commission, and 200,000 shares to be paid to Campbell as magazine representative fee.

TWENTY-SIXTH: A true copy of the said agreement is attached hereto and made a part hereof.

TWENTY-SEVENTH: That in accordance with the said agreement, Master-Craft duly purchased from the defendant Downe Communications the said Two Million (\$2,000,000.00) Dollars of advertising space in any magazine owned by defendant Downe Communications or any of its subsidiaries and paid for the same as herein set forth, and duly purchased and paid for all advertising agency commissions to Regal for their services to be rendered to Master-Craft in connection with said advertising space and duly purchased and paid for

the magazine representative fee to defendant Campbell for their services to be rendered in connection with said advertising space by assigning, transferring and delivering shares of stock of Master-Craft to each of the named defendants in accordance with the said agreement, namely Nine Hundred Thirty-Three Thousand Three Hundred Thirty-Three (933,333) shares of Master-Craft to defendant Downe Communications, Two Hundred Thousand (200,000) shares of Master-Craft to Regal, Two Hundred Thousand (200,000) shares to Campbell, all of which respectively were received and accepted by

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each of the said defendants as payment therefor, in accordance with the said agreement.

TWENTY-EIGHTH: That therewith Master-Craft became the owner of Two Million (\$2,000,000.00) Dollars of advertising space in any magazine owned by defendant Downe Communications or any of its subsidiaries and became entitled to the right to order and to have the said amount of advertising space for the period January 13, 1969 to and including January 31, 1971, and to have the services of the defendants Regal and Campbell in connection therewith as provided in the said agreement.

TWENTY-NINTH: That the defendants never intended to perform the said agreement, dated December 26, 1968, and did not do so.

THIRTIETH: That thereafter, and up to 1970, Master-Craft ordered and used approximately Two Hundred Fifty Thousand (\$250,000.00) Dollars of advertising space in certain magazines owned by the defendant Downe Communications.

THIRTY-FIRST: That on or prior to June 4, 1970, the defendant Downe Communications as part of the plan, scheme and conspiracy of the defendants, knowingly and willfully refused to furnish to Master-Craft any of the advertising space purchased by Master-Craft under the said agreement and refused to perform under the said agreement, dated December 26, 1968.

THIRTY-SECOND: That on or prior to June 4, 1970, as part of the plan, scheme and conspiracy of the defendants, the defendants Regal and Campbell, knowingly and willfully refused to perform their obligations to Master-Craft as required by the said

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agreement and refused and failed to furnish any services to Master-Craft as required by said agreement.

THIRTY-THIRD: That the said refusal of the defendants Downe Communications, Regal and Campbell to furnish and provide to Master-Craft the said advertising space and services was part and parcel of the plan, scheme and conspiracy of the defendants Downe Communications, Downe, Javits, Regal, and Campbell which was conceived and made by them at and prior to the making of the said agreement, dated December 26, 1968, not to furnish to Master-Craft the said Two Million (\$2,000,000.00) Dollars of advertising space and advertising service as set forth in that said agreement.

THIRTY-FOURTH: That the said defendants knowingly and willfully and as part and parcel of the plan, scheme and conspiracy of these defendants never intended to perform the said agreement with Master-Craft, dated December 26, 1968, and intended to deceive and defraud the plaintiff and Master-Craft.

THIRTY-FIFTH: That the said defendants as part of the said plan, scheme and conspiracy, knowingly and willfully intended to take and acquire the shares of stock of Master-Craft for the purpose of manipulating, inflating and increasing the balance sheet asset value of defendant Downe Communications and to manipulate, inflate and increase the value and price of the shares of stock of defendant Downe Communications, and to benefit themselves without

VERIFIED COMPLAINT

paying Master-Craft for the said shares of stock and without performing the agreement, dated December 26, 1968.

THIRTY-SIXTH: That the said defendants used the said shares of stock of Master-Craft to acquire, to inflate and manipulate the asset value of the balance sheet of defendant Downe Communications by more than Two Million Five Hundred Thousand (\$2,500,000.00) Dollars.

THIRTY-SEVENTH: That the said defendants used the said shares of stock of Master-Craft so acquired to inflate and to manipulate the market price of the shares of stock of defendant Downe Communications for their own benefit.

THIRTY-EIGHTH: That the market price of a share of stock of Downe Communications was fluctuated in the year 1969 from a low of \$13-1/4 to a high of \$61-5/8 per share.

THIRTY-NINTH: That the defendants Downe Communications, Downe and Jevitz were involved in the sale and purchase of Downe Communications stock in the year 1969.

FORTIETH: That the defendants Downe Communications, Downe, and Jevitz benefitted from the said sale and purchase, rise and fall in the price of, shares of stock of Downe Communications in the year 1969.

FORTY-FIRST: That at all times herein mentioned, the defendants Downe Communications and Downe controlled the use and voting rights of all of the shares of stock of Master-Craft sold and delivered by Master-Craft to defendants Regal and Campbell pursuant to the said agreement, dated December 26, 1968.

FORTY-SECOND: That the said plan, scheme and conspiracy of the defendants was part and parcel of a continuing plan, scheme and conspiracy by them which they had knowingly and willfully

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perpetrated other corporations both before and after the time of the acts committed against the plaintiff and Master-Craft.

FORTY-THIRD: That upon information and belief, the market price and value of shares of stock of Master-Craft at the date of the aforesaid agreement was approximately Six (\$6.00) Dollars per share.

FORTY-FOURTH: That based upon the foregoing, the value of the said Nine Hundred Thirty-Three Thousand Three Hundred Thirty-Three (933,333) shares of Master-Craft stock paid to defendant Downe Communications was approximately Five Million Five Hundred Ninety-Nine Thousand Nine Hundred Ninety-Eight (\$5,599,998.00) Dollars.

FORTY-FIFTH: That based upon the foregoing, the value of the said Two Hundred Thousand (200,000) shares of Master-Craft stock paid to defendant Regal, was approximately One Million Two Hundred Thousand (\$1,200,000.00) Dollars.

FORTY-SIXTH: That based upon the foregoing, the value of the said Two Hundred Thousand (200,000) shares of Master-Craft stock paid to defendant Campbell was approximately One Million Two Hundred Thousand (\$1,200,000.00) Dollars.

FORTY-SEVENTH: That the defendants knew the said advertising was an important means and method of sales of the goods and services of Master-Craft to the public upon which and by which the sales volume, the business and the profits of Master-Craft would depend.

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FOURTY-EIGHTH: That the defendants knew that the refusal and failure of defendants Downe Communications, Regal, and Campbell to perform the agreement, dated December 26, 1968, with Master-Craft would injure and damage Master-Craft and the plaintiff by a loss of business, a loss of value of the stock of Master-Craft, and a loss of income and profits.

FOURTY-NINTH: That as a result of the foregoing, Master-Craft was caused to lose business, income and profits.

FIFTIETH: That by reason of the foregoing, the plaintiff (Master-Craft) has been damaged in the sum of Thirty-Five Million (\$35,000,000.00) Dollars.

SECOND CAUSE OF ACTION AGAINST DEFENDANTS,
DONWE COMMUNICATIONS, INC., EDWARD R. DONWE,
JR., REGAL ADVERTISING ASSOCIATES, INC.,
CAMPBELL-REYNOLDS, INC., and ERIC M. JAVITS:

FIFTY-FIRST: Plaintiff repeats each and every allegation set forth in paragraphs "FIRST" through "FIFTIETH".

FIFTY-SECOND: That at the times herein mentioned, the plaintiff was the owner and holder of Three Million Two Hundred Seventy-Eight Thousand (3,278,000) shares of stock of Master-Craft.

FIFTY-THIRD: That at the times mentioned, the defendants knew that the plaintiff was the owner and holder of Three Million Two Hundred Seventy-Eight Thousand (3,278,000) shares of stock of Master-Craft.

FIFTY-FOURTH: That at the times herein mentioned, the total issued and outstanding shares of stock of Master-Craft was

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approximately Seven Million (7,000,000) shares, to the knowledge of the defendants.

FIFTY-FIFTH: That by reason of the foregoing, the plaintiff was damaged in the amount of Thirty-Five Million (\$35,000,000) Dollars.

SECOND CAUSE OF ACTION AGAINST DOWNE COMMUNICATIONS, INC., REGAL ADVERTISING ASSOCIATES, INC., and CAMPBELL-MATTHEWS, INC.:

FIFTY-SIXTH: Plaintiff repeats each and every allegation set forth in paragraphs "FIRST" through "FIFTY-FIFTH".

FIFTY-SEVENTH: That the defendants Downe, Regal and Campbell have breached the agreement, dated December 26, 1968.

FIFTY-EIGHTH: That by reason of the foregoing, the plaintiff (Master-Craft) has been damaged in the amount of Thirty-Five Million (\$35,000,000.00) Dollars.

FOURTH CAUSE OF ACTION AGAINST DEFENDANTS, DOWNE COMMUNICATIONS, INC., EDWARD R. DOWNE, JR., CHEMICAL BANK, L. F. DOMMERICH CO., INC., ERIC M. JAVITS, ALEXANDER SALES CORPORATION, IRWIN NATOV and JAMES O. BARLOW:

FIFTY-NINETH: Plaintiff repeats each and every allegation set forth in paragraphs "FIRST" through "FIFTY-EIGHTH".

SIXTIETH: That at the times herein mentioned, the total issued and outstanding shares of stock of Master-Craft was approximately Seven Million (7,000,000) shares, to the knowledge of the defendants.

SIXTY-FIRST: That the shares of stock of Master-Craft at the times mentioned herein fluctuated in price between \$8.00 and

VERIFIED COMPLAINT

\$9.00 per share and \$3.00 per share.

SIXTY-SECOND: That the shares of stock of Master-Craft owned by defendants Regal and Campbell were subject to the order and control of defendants Downe Communications, Downe, and Javits, in all matters and in particular, in the voting of those shares of purposes of corporate control of Master-Craft by defendants, Downe Communications and Cowne.

SIXTY-THIRD: That the defendants Downe Communications, Downe and Javits, as part and parcel of the aforesaid plan, scheme and conspiracy intended and planned to obtain total control of Master-Craft and of its assets, inventory, accounts, offices, facilities, mailing lists and business.

SIXTY-FOURTH: The defendants Downe Communications, Downe, and Javits, knew at all times herein mentioned, that the defendants Chemical Bank and L. F. Dommerich Co., Inc., hereinafter Dommerich, were the factors for Master-Craft and the source of its money to finance and operate the business of Master-Craft, and that without such source of money, to the knowledge of the defendants, Master-Craft could not conduct its business, nor pay its employees, officers, suppliers and creditors, nor could it remain in business.

SIXTY-FIFTH: The defendants Downe Communications, Downe and Javits knew that the plaintiff had borrowed money from the defendants Chemical Bank and Dommerich, and that he had signed his personal endorsement for some, or for all of the obligations of Master-Craft to defendants Chemical Bank and Dommerich.

VERIFIED COMPLAINT

SIXTY-SIXTH: The defendant Downe Communications, at all times herein mentioned was a substantial and important customer of defendant Chemical Bank, being involved with deposits and transactions in a total volume of multi-millions annually.

SIXTY-SEVENTH: The defendant Downe, at all times herein mentioned was a substantial and important customer of defendant Chemical Bank, being involved with deposits and transactions in a total volume of multi-millions annually.

SIXTY-EIGHTH: That the defendant Chemical Bank owned or controlled defendant Dommerich.

SIXTY-NINTH: The defendants Downe Communications, Downe, Jr. and Javits, as part of the aforesaid plan, scheme and conspiracy to obtain control of Master-Craft and to defraud and injure the plaintiff and Master-Craft, knowingly and willfully enlisted the knowing and willful aid, cooperation and action of defendants Chemical Bank, Dommerich, Natow and Barlow, for the purpose of having these defendants use and employ their vital and key position of financial dominance with Master-Craft and with the plaintiff to force the plaintiff to transfer and to deliver to defendant Downe Communications all of the plaintiff's Three Million Two Hundred Seventy-Eight Thousand (3,278,000) shares of stock of Master-Craft upon threat by these defendants to shut off all money and credit to Master-Craft, to call in all outstanding loans and debts of Master-Craft and of plaintiff and to enforce the plaintiff's al-

VERIFIED COMPLAINT

Delegated personal liability for Master-Craft obligations to defendant Chemical Bank and defendant Dommerich.

SEVENTIETH: That the defendants Downe Communications, Downe and Javits communicated with the defendant Barlow in connection with and in furtherance of the said plan, conspiracy and scheme.

SEVENTY-FIRST: That at the time herein mentioned, the defendant Barlow was an officer, to wit: Vice President of defendant Chemical Bank.

SEVENTY-SECOND: That at the times mentioned herein, the defendant Natov was an officer of defendant Chemical Bank, and of defendant Dommerich Co., Inc., namely Chairman of the Board of L.P. Dommerich Co., Inc.

SEVENTY-THIRD: That the defendants Downe Communications, Downe and Javits communicated with the defendant Natov in connection with and in furtherance of the said plan, conspiracy and scheme.

SEVENTY-FOURTH: That the said defendants Chemical Bank, Dommerich, Barlow, and Natov knowingly and willfully joined the aforesaid defendants in the said plan, scheme and conspiracy, and they all knowingly and willfully agreed to work together to carry out and effectuate the aforesaid plan, scheme and conspiracy to

VERIFIED COMPLAINT

injure, deceive and defraud the plaintiff and Master-Craft, and to obtain total control of Master-Craft, its corporate structure, its assets, inventory, accounts receivable, offices, mailing lists, business, books and records for defendant Downe Communications.

SEVENTY-FIFTH: That in pursuance of the said plan, scheme, and conspiracy, the defendants Downe Communications, Downe and Javits, in order to induce the plaintiff to transfer, assign and deliver his shares of stock in Master-Craft to defendant Downe Communications, represented to plaintiff that they would merge Master-Craft into Alexander Sales Corporation; that he would receive one (1) share of stock of the merged corporation for every five (5) shares of stock of Master-Craft; that he would receive 130,000 shares of stock of the merged corporation, that the merged corporation would pay and satisfy tax liabilities of Master-Craft to an amount not to exceed \$22,500.00, that defendant Downe Communications would cause and have returned to the plaintiff, free and clear of any liens, claims, or charges, one half of his personal funds amounting to \$34,000.00, then on deposit with defendant Dommarich; that the merged corporation would pay other fees, charges and liabilities of Master-Craft; that the merged corporation would be actively backed, promoted, and continued as a mail order house by the defendants, and that the value and price of the shares of stock of the combined corporations of Master-Craft and Alexander Sales Corporation would increase in value.

SEVENTY-SIXTH: That the said representations made by the said defendants were false and untrue to the knowledge of the defendants, and the same were made with the intent and for the purpose of deceiving the plaintiff and to induce the plaintiff, in

VERIFIED COMPLAINT

reliance thereon, to transfer, assign, and deliver his said shares of stock in Master-Craft to defendant Downe Communications.

SEVENTY-SEVENTH: That as part of the said plan, scheme and conspiracy the defendants Chemical Bank, Dommerich, Natov and Barlow represented to the plaintiff that unless he agreed to the proposition aforesaid demanded by the defendants Downe Communications and Downe, that the defendants Chemical Bank and Dommerich would immediately cut off all money and credit to Master-Craft; that Master-Craft would be rendered unable to pay any of its employees, officers, creditors, manufacturers and suppliers, and would be unable to conduct its business; and that Master-Craft would be put out of business, and that defendants Chemical Bank and Dommerich would sue the plaintiff personally for the alleged debts and obligations of Master-Craft to them, but that they would not do so if he agreed to the proposition demanded by defendants Downe Communications and Downe.

SEVENTY-EIGHTH: That the plaintiff believed the aforesaid representations by defendants Chemical Bank, Dommerich, Natov and Barlow to be true, and relied thereon.

SEVENTY-NINETH: That the representations made by the defendants Chemical Bank, Dommerich, Natov and Barlow that they would not sue the plaintiff personally for the alleged debts of Master-Craft to defendants Chemical Bank and Dommerich were false, to the knowledge of the said defendants when made, and the defendants commenced a lawsuit against the plaintiff personally for the alleged debts of Master-Craft to defendants Chemical and Dommerich.

EIGHTIETH: That the plaintiff, without knowledge of the falsity thereof, and in reliance upon the said representations by the said defendants, the plaintiff entered into an agreement, dated February 19, 1970, with defendant Downe Communications, a copy of

VERIFIED COMPLAINT

which is attached hereto and transferred, assigned, and delivered to defendant Downe Communications all of his shares of stock in Master-Craft.

EIGHTY-FIRST: That, after the plaintiff signed the aforesaid agreement, dated February 19, 1970, and transferred all of his shares of stock to defendant Downe Communications, the said defendants compelled the plaintiff to resign as Chairman of the Board of Master-Craft; to turn over his keys to the business premises of Master-Craft; to remove his personal effects from Master-Craft, and he was put out and excluded from the offices and property of Master-Craft by said defendants.

EIGHTY-SECOND: That the defendants Downe Communications, Downe, and Javits knowingly and willfully, as part of their plan, scheme and conspiracy, did not intend to perform any of the terms of the said letter agreement, dated February 19, 1970, or to carry out and perform any of the representations made to plaintiff and never did so.

EIGHTY-THIRD: That as part of the defendants' plan, scheme and conspiracy, it was the purpose and intention of the defendants to take from the plaintiff all of his said shares of stock of Master-Craft without paying him anything therefor, and to force him out of Master-Craft in order to accomplish the aims and purposes of their fraudulent plan, scheme and conspiracy to injure the plaintiff and Master-Craft and to benefit themselves and to acquire for the defendants, and in particular, Downe Communications, the control, domination, and possession of Master-Craft and of its assets, inventory, property and business, which they did.

EIGHTY-FOURTH: That the defendants Downe Communications, Downe, and Javits also used the said shares of stock of Master-

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VERIFIED COMPLAINT

Craft to manipulate and inflate the price and value of the shares of stock of Downe Communications to their own benefit, personal gain and advantage.

EIGHTY-FIFTH: That thereafter, the defendants Downe Communications, Downe, and Javits, did nothing to effect a merger of Alexander Sales Corporation with Master-Craft.

EIGHTY-SIXTH: That the said defendants never intended to effect a merger of Alexander Sales Corporation with Master-Craft.

EIGHTY-SEVENTH: That the defendant Alexander Sales Corporation, knowingly and willfully was a part of the said plan, scheme and conspiracy of the said defendants.

EIGHTY-EIGHTH: That the defendants Downe Communications, Downe and Javits had and exercised control or domination of Alexander Sales Corporation with the cooperation and consent of the defendant Alexander Sales Corporation.

EIGHTY-NINETH: That the defendants thereafter having acquired total control and possession of Master-Craft, knowingly and willfully failed, refused and prevented Master-Craft from registering the shares of stock of Master-Craft which had been paid and delivered to defendants Downe Communications, Regal, and Campbell in reference to the agreement, dated December 26, 1968.

NINETIETH: That the defendants Downe Communications, Edward R. Downe, Jr., and Eric M. Javits, upon the false and fraudulent pretext that Master-Craft did not register the said shares of stock which it had paid and delivered to defendants Downe Communications, Regal and Campbell sent a letter to Master-Craft, dated June 4, 1970, alleging that it had "no further obligations under [that contract]."

NINETY-FIRST: That the foregoing was a part and parcel of the said plan, scheme and conspiracy of the defendants to

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VERIFIED COMPLAINT

defraud, deceive and injure the plaintiff and Master-Craft and to benefit themselves.

NINETY-SECOND: That by reason of the foregoing, the plaintiff has been damaged in the amount of Fifty Million (\$50,000,000.00) Dollars.

FIFTH CAUSE OF ACTION AGAINST DEFENDANT DOWNE COMMUNICATIONS, INC.:

NINETY-THIRD: Plaintiff repeats each and every allegation set forth in paragraphs "FIRST" through "NINETY-SECOND".

NINETY-FOURTH: That the defendant Downe Communications breached the said agreement, dated February 19, 1970.

NINETY-FIFTH: That by reason of the foregoing, the plaintiff has been damaged in the amount of Thirty-Five Million (\$35,000,000.00) Dollars.

SIXTH CAUSE OF ACTION AGAINST DEFENDANTS DOWNE COMMUNICATIONS, INC., EDWARD R. DOWME, JR., ERIC M. JAVITS, AND CHEMICAL BANK AND L. F. DOMMERICH CO., INC.:

NINETY-SIXTH: Plaintiff repeats each allegation set forth in paragraphs "FIRST" through "NINETY-FIFTH".

NINETY-SEVENTH: That at the time that defendant Downe Communications took control and possession of Master-Craft, Master-Craft had inventory of radios, phonographs and other property, merchandise in the amount of \$500,000; accounts receivable, mailing lists, office equipment, furniture, office lease, in an amount of some \$300,000.00; advertising space and services due from defendants Downe Communications, Regal, and Campbell in an amount of \$1,750,000.00, in addition to the value of a going business.

VERIFIED COMPLAINT

NINETY-EIGHTH: That the said defendants took, misappropriated, wasted and denuded the property, assets and business of Master-Craft and knowingly and willfully put Master-Craft out of business, after they had used it for their own benefit.

NINETY-NINTH: That by reason of the foregoing, the plaintiff (Master-Craft) has been damaged in the amount of Fifty Million (\$50,000,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants and in favor of the plaintiff as follows:

First Cause of Action:	\$35,000,000.00
Second Cause of Actions:	\$35,000,000.00
Third Cause of Action:	\$35,000,000.00
Fourth Cause of Action:	\$50,000,000.00
Fifth Cause of Action:	\$35,000,000.00
Sixth Cause of Action:	\$50,000,000.00

together with costs, interest and attorney's fees, and together with such other and further relief as may be just and proper.

Dated: New York, New York
August 11, 1972

CHARLES BUTTON, Esq.
Attorney for Plaintiff
Office & P.O. Address
299 Broadway
New York, New York

COMPLAINT

December 26, 1968

Master-Craft Electronics Corp.
1115 Broadway
New York, New York

Gentlemen:

This letter will confirm to you that Downe Communications, Inc., ("Downe") the undersigned, agrees to make available to you or cause to be made available to you during the term of this agreement at any time at your request or on your behalf at the request of Regal Advertising Associates Corp., up to \$2,000,000 of advertising space in any magazine owned by Downe, or any of its subsidiaries, upon the following terms and conditions:

1. The term during which such space may be run will commence January 1, 1969 and be for a term of four (4) years ending December 31, 1972.
2. The value of the \$2,000,000 of advertising space will be computed at the general national advertising card rate for space prevailing at the time of actual use of the space. All orders for space must conform to the respective normal closing times of said magazines. All ads must be approved by Downe, such approval will not be unreasonably withheld. Master-Craft warrants to Downe that this space will only be used by Master-Craft and its subsidiaries (of which it has at least 51% of the outstanding common stock) and Master-Craft will not sell, assign or otherwise transfer such space to others.
3. The purchase price for the \$2,000,000 of advertising space shall be a total of 1,333,333 shares of the common stock of Master-Craft to be delivered immediately as follows:
 - (a) 200,000 shares to Regal Advertising Associates Corp. as advertising agency commission;
 - (b) 200,000 shares to Campbell-Reynolds, Inc. as magazine representative fee; and
 - (c) 933,333 shares to Downe,

COMPLAINT

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CONTRACT

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With respect to subparagraph 3(c) above, it is hereby stipulated and agreed that 300,000 shares of the 933,333 shares to be delivered to Downe shall be deemed to be liquidated damages payable and earned by Downe for its preparation and commitments to reserve advertising space in anticipation of the projected advertising to be placed by Master-Craft. The balance of 633,333 shares shall be deemed to be actual payment for advertising space which is to be placed by or on behalf of Master-Craft as herein provided.

Upon the delivery to Downe by Master-Craft of the Master-Craft shares as provided for herein, no shares of said stock shall be returnable by Downe, Regal or Campbell-Reynolds to Master-Craft, but shall be deemed to have been fully earned by each pursuant to the terms of this agreement.

4. (a) Downe shall have the right to notify Master-Craft in writing, at any time hereafter of its desire to have not less than 640,000 shares of the Master-Craft common stock received by Downe, Regal and Campbell-Reynolds hereunder, registered pursuant to the Securities Act of 1933.

Upon such notice by Downe, Master-Craft shall use its best efforts, but in any event by May 31, 1970 will:

(i) register said shares;

(ii) cause a registration statement(s) covering said shares to become effective within a reasonable time thereafter;

(iii) keep such registration statement effective for a period of at least nine (9) months and will from time to time during such period amend or supplement the registration statement(s) and the prospectus used in connection therewith to the extent necessary in order to comply with the Securities Act of 1933, to make such prospectus available in reasonable quantities during the effective period; and

(iv) register or qualify such shares of common stock for offering and sale under the securities or blue sky laws in such states as may be reasonably designated by Downe, Regal or Campbell-Reynolds.

John D. Russell Robert L. Kau

COMPLAINT

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(b) In addition to the registration rights set forth in subparagraph 4(a), Downe, Regal and Campbell-Reynolds shall be entitled to written notice from Master-Craft that it intends to file a registration statement with the Securities and Exchange Commission, covering shares of its common stock. Such written notice shall be given not less than thirty (30) nor more than sixty (60) days prior to filing and Downe, Regal and Campbell-Reynolds shall have fifteen (15) days following the receipt of such notice from Master-Craft to advise Master-Craft of their intention to include in any such registration statement any or all of their Master-Craft stock and Master-Craft shall include such stock in the registration statement. Master-Craft's obligation under this subparagraph (b) shall not terminate until December 31, 1973.

(c) In the event that Downe, Regal or Campbell-Reynolds request that Master-Craft register their shares in subparagraph 4(a), Master-Craft shall bear all reasonable costs and expenses incident to printing and filing the registration statements and all amendments thereto and the cost of furnishing reasonable quantities of each preliminary prospectus and each final prospectus and each amendment and supplement thereto to the underwriters, dealers and other purchasers of the Master-Craft common stock and costs and expenses in connection with the qualification of said stock under the blue sky laws of various jurisdictions, except that the fees and expenses of counsel for Downe, Regal and Campbell-Reynolds and any underwriter and distribution costs attributable to the common stock sold by Downe, Regal and Campbell-Reynolds shall be borne equally by Downe, Regal and Campbell-Reynolds or such underwriters and Downe, Regal and Campbell-Reynolds shall reimburse Master-Craft for up to \$15,000 for Master-Craft's legal expenses and costs and up to \$10,000 for printing costs and expenses.

With respect to the registration statements filed by Master-Craft pursuant to subparagraph 4(b), Downe, Regal and Campbell-Reynolds shall each pay the proportionate amount (excluding Master Craft's overhead and time of Master-Craft's employees) attributable to the stock sold by them.

Master-Craft agrees to indemnify and hold Downe, Regal and Campbell-Reynolds harmless from any losses or damages incurred by Downe, Regal and Campbell-Reynolds, resulting from misstatements or omissions from any registration statement.

Dr. J. M. Clegg Robert H. Sturtevant

COMPLAINT

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CONTRACT

Please signify your agreement to the foregoing by signing and returning the enclosed copy of this letter.

Very truly yours,

DOWNIE COMMUNICATIONS, INC.

By Robert M. Flan Vice Pres

ACCEPTED & AGREED TO:

MASTER-CRAFT ELECTRONICS CORP.

By Stanley A. Fife
J. S. Fife

REGAL ADVERTISING ASSOCIATES CORP.

By Henry R. Siegel, Pres
HENRY R. SIEGEL

CAMPBELL-REYNOLDS INC.

By Eduard Kukl Pus
EDUARD KUKL PUS

COMPLAINT

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LETTER DATED JUNE 4, 1970.



DNNE COMMUNICATIONS, INC.

641 LEXINGTON AVENUE, NEW YORK, N.Y. 10022 - (212) 539-14100

OFFICE OF THE PRESIDENT

June 4, 1970

Master-Craft Electronics Corp.
c/o H. John Gluskin, Esq.
350 Fifth Avenue
New York, N.Y.

Gentlemen:

Reference is made to our earlier letters of May 14, 1970 and May 25, 1970. Not having heard from you with respect to the registration of the shares of Common Stock of Master-Craft Electronics Corp. ("Master-Craft") owned by Downe Communications, Inc. ("Downe") and having determined that no such registration was made, we consider you in breach of the agreement between Master-Craft, Downe, Regal Advertising Associates Corp. and Campbell-Reynolds, Inc. dated the 26th of December, 1968 and, therefore, advise you we have no further obligations under that contract.

Sincerely,

Edward Downe

ED: AP
CC: Mr. Al Dayan
Mr. James Farnell
Regal Advertising Associates Corp.
Campbell-Reynolds, Inc.

REGISTERED MAIL

COMPLAINT

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AL DAYON
149 Fifth Avenue
New York, New York 10010

February 19, 1970

Mr. Edward R. Downe, Jr.
Downe Communications, Inc.
641 Lexington Avenue
New York, New York 10022

Dear Mr. Downe:

This will confirm my agreement with you as follows:

1. I warrant and represent that I am the owner of approximately 3,278,000 shares of Mastercraft Electronics Corp. (Mastercraft) common stock free and clear of all liens, charges and encumbrances and the certificate or certificates representing 3,032,000 shares are in the possession of Jack Bennett, Esq. of the law firm of Barr, Bennett & Fullen, the remainder in my personal possession.
2. I agree to sell privately to Downe Communications, Inc. (Downe) for investment and not for resale or distribution, for \$10. and other good and valuable considerations, such number of those shares after the proposed merger between Mastercraft and Alexander Sales Corp. (Alexander) and the reverse 1 for 5 split of Mastercraft shares to be effected in connection therewith, as to leave me the owner of 130,000 post-split and combined shares of the new company resulting from the Mastercraft-Alexander combination.
(A.D.)
3. I warrant, represent and agree that I will make personal arrangements with Messrs. James Farnell and Ralph Setton with respect to such number of those 130,000 post split and combined shares that I will own as may be necessary to satisfy any claims by them against me and/or Mastercraft and I hereby indemnify you, Alexander, Mastercraft and the new combined entity against any such claims.
(A.D.)

All of the above, however, are conditioned upon 1) the Alexander-Mastercraft business combination taking place; 2) the combined entity satisfying the tax liabilities not to exceed \$22,500 for which the present Mastercraft officers

COMPLAINT

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LETTER AGREEMENT

Mr. Edward R. Downe, Jr.

-2-

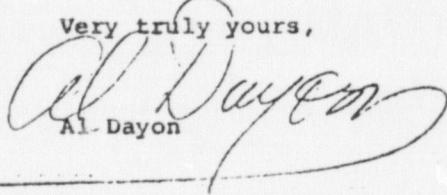
February 19, 1970

I contribute my portion of \$12,000.
and/or directors may be personally liable; 3) that there be returned or paid to me free and clear of any lien, charges or encumbrances an amount equal to one-half of my personal funds of approximately \$34,000 now on deposit with Demerich and Co.; 4) the combined entity will to the extent permitted by law defend against the claims of those claimants presently in the Reeder lawsuits; and 5) that all interests in, right to and/or claims against Van Electronics Inc. (Vantron) and others arising out of the Vantron-Mastercraft relationship be assigned to me personally, in payment for which I hereby agree to reimburse Mastercraft-Alexander out of any recovery which I may obtain in or as a result of said litigation, any investment therein or fees, costs and expenses of litigation incurred by Mastercraft heretofore. I hereby agree to undertake the payment of all fees, costs or expenses in connection with such Vantron-related litigation and do hereby indemnify Alexander and Mastercraft individually and any future combined corporation comprised thereof against any costs, fees, expenses, claims or counterclaims arising out of the Vantron litigation.

I hereby agree to deliver to you all shares of Mastercraft in my possession and I hereby authorize the firm of Javits & Javits, counsel to Alexander, to receive all my stock certificate(s) from the firm of Barr, Bennett and Fullen and hereby instruct the latter firm to deliver same to the former firm. I hereby agree to execute such other and further documents as may be necessary to effectuate the intent of the foregoing and to take such steps or further action to transfer or deal with my certificates in accordance with the foregoing.

If this correctly sets forth our understanding please indicate on the attached copy and return it to me for our files.

Very truly yours,


Al Dayon

READ AND AGREED:

DOWNE COMMUNICATIONS, INC.

BY: 

COMPLAINT

1650
STOCK POWER

C 229—Assignment Separate from Certificate.

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

STOCK POWER

FOR VALUE RECEIVED, I

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OR ADDRESS

I hereby sell, assign and transfer unto

Dayon, Elmer

three million two hundred seventy-eight thousand

3,278,000 Shares of the Capital Stock of

Mastercraft Electronics Corp.

standing in my(our) name(s)

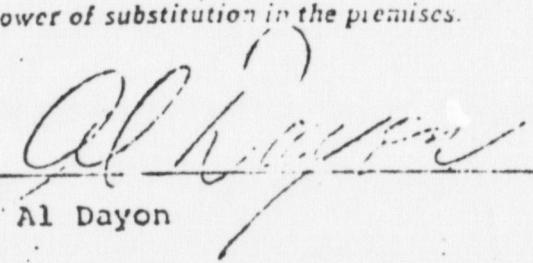
on the books of said Corporation represented by Certificate(s) No(s).

herewith, and do hereby irrevocably constitute and appoint

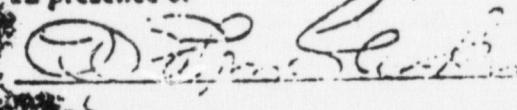
attorney to transfer the

said stock on the books of said Corporation with full power of substitution in the premises.

Dated 7-18-1972


Al Dayon

In presence of



COMPLAINT

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IRREVOCABLE PROXY

IRREVOCABLE PROXY

KNOW ALL MEN BY THESE PRESENTS, That the undersigned,
a stockholder of Mastercraft Electronics Corp., holding
3,278,000 shares of stock of the said Corporation does hereby
make, constitute and appoint Downe Communications, Inc. with
full power of substitution, the true and lawful attorney and
proxy of the undersigned for and in his name, place and stead
to attend all meetings of the stockholders of such corporation
or of any corporation resulting from the combination of such
corporation with Alexander Sales Corp. and to vote any and
all shares of the stock of such corporation or resulting
corporation at the time standing in his name, at any and all
meetings of the stockholders or any adjournment thereof.
And the undersigned hereby affirms that this proxy is given
in connection with a letter agreement between Al Dayon and
Downe Communications, Inc. dated February 19, 1970 and is
conditioned thereon and that this proxy is coupled with an
interest and is irrevocable, and the undersigned hereby
ratifies and confirms all that the said proxy may lawfully do
or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has hereunto set
his hand and seal this 25th day of February 1970.

Al Dayon (L.S.)

COMPLAINT

STATE OF NEW YORK, COUNTY OF NEW YORK

AL DAYON,

ss:

INDIVIDUAL VERIFICATION

deponent is the plaintiff
read the foregoing complaint

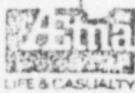
the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me, this 11th day of August 1972

66-1202-1
AL DAYON

GORDON J. LAND
NOTARY PUBLIC, STATE OF NEW YORK
No. 30-7421450
Qualified in Nassau County
STATE EXAMINATION NUMBER 66-1202-1

AETNA CASUALTY & SURETY CO. ATTACHMENT UNDERTAKING
(BOND) DATED SEPTEMBER 22, 1972



UNDERTAKING ON
ATTACHMENT

THE AETNA CASUALTY AND SURETY COMPANY
Hartford, Connecticut 06115

SUPREME COURT : COUNTY OF BRONX

AL DAYON, Individually and on behalf of
MASTER-CRA ELECTRONICS CORP.,

Civil Practice Law & Rules
Section 6212

Plaintiffs

Index No. 15225/72

-against-

DOWNE COMMUNICATIONS, INC., EDWARD R. DOWNE, JR.,
THE CHEMICAL BANK, L.F. DOMMERICH CO. INC.
JOSEPH O. BARLOW, IRWIN KATOV, ERIC H. JAVITS, REGAL
ADVERTISING ASSOCIATES CORP., CAMPBELL-REYNOLDS, INC.
ALEXANDER SALES CORPORATION, JOHN DOE, RICHARD ROE
and RICHARD ROE, INC., The Last Three
names being fictitious, the true names being
presently unknown,

Defendants

Bond No. 71 S 4466

The above named Plaintiff having applied to one of the Justices of this Court, for an order of attachment against the property of the above named Defendant ~~s~~, DOWNE COMMUNICATIONS, INC. and EDWARD R. DOWNE, JR.
under and by virtue of the provisions of the Civil Practice Law & Rules

NOW, THEREFORE, THE AETNA CASUALTY AND SURETY COMPANY, of Hartford, Connecticut, having an office and usual place of business at 151 William Street, New York, New York,

does hereby undertake in the sum of ONE HUNDRED THOUSAND AND 00/100 (\$100,000.00) -- DOLLARS

of which amount the sum of FIFTY THOUSAND AND 00/100 (\$50,000.00) -- DOLLARS
is conditioned that the Plaintiff will pay to the Defendants all legal costs and damages which may be sustained by
DOWNE COMMUNICATIONS, INC. and EDWARD R. DOWNE, JR.
reason of the attachment if the Defendants recover judgment or it is finally decided that the Plaintiff was not entitled
to an attachment of the Defendants property, and the balance of FIFTY THOUSAND AND 00/100 -- DOLLARS
(\$50,000.00)
conditioned that the Plaintiff will pay to the Sheriff all of his allowable fees.

Dated September 22nd 1972

THE AETNA CASUALTY AND SURETY COMPANY

By C.M. Piciullo
C.M. Piciullo, Attorney-in-Fact

EXHIBIT 5 - 1ST MOTION BY DEFENDANT, DOWNE COMMUNICATIONS

P.R.E.S. E.N.T.

Honorable SAMUEL H. GOLD

Justice.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X	:
AL DAYON, Individually and on behalf	:
of MASTER-CRAFT ELECTRONICS CORP.,	:
Plaintiff,	:
-against-	:
DOWNE COMMUNICATIONS, INC.,	:
EDWARD R. DOWNE, JR., THE CHEMICAL	:
BANK, L. P. DOMMERICH CO., INC.,	:
JOSEPH O. BARLOW, IRWIN NATOV,	:
ERIC M. JAVITS, REGAL ADVERTISING	:
ASSOCIATES CORP., CAMPBELL-REYNOLDS,	:
INC., ALEXANDER SALES CORP., JOHN	:
DOE, RICHARD ROE and RICHARD ROE,	:
INC., the last three names being	:
fictitious, true names being	:
presently unknown,	:
Defendants.	:
-----X	:

Upon the order of attachment of property of the defendants, Downe Communications, Inc., and Edward R. Downe, Jr., granted on or about August 14, 1972, and upon the annexed summons and all other papers upon which said attachment was granted and all levies thereunder, and upon the annexed affidavits of, George R. Hinckley, sworn to on the 21st day of October, 1972, Francis A. Loughlin, sworn to on the 23rd day of October, 1972, Harold J. Smith, sworn to on the 23rd day of October, 1972, and Richard B. Klarberg,

EXHIBIT 5 - 1ST MOTION BY DEFENDANT, DOWNE COMMUNICATIONS
sworn to on the 21st day of October, 1972, and the demand
for papers with proof of service thereon served upon
plaintiffs' attorney on October 19, 1972, let the plaintiffs
and the Sheriff of the City of New York show cause before
this Court at a Special Term, Part I thereof, to be held
at the County Courthouse, Grand Concourse, Bronx, New York,
on the ~~16~~¹⁷ day of October, 1972, at 9:30 o'clock in the
forenoon or as soon thereafter as counsel can be heard,
why an order should not be granted vacating the said order
of attachment and setting aside any and all levies made
thereunder on the ground that the plaintiffs have failed to
serve copies of the papers upon which said attachment was
granted in accordance with the demand for papers served
by defendants pursuant to CPLR Section 6212(d), and why an
order should not be granted directing that the plaintiffs
forthwith pay to the Sheriff all fees due and owing and for
such other and further relief as may be just and proper
together with costs and disbursements, including the
defendants' attorneys' fees; and it is further

ORDERED, that the plaintiffs and the Sheriff
of the City of New York are hereby stayed from any and all
further proceedings in respect of said order of attachment
and the levies thereunder, until the final determination
of this motion, and that all levies made by the Sheriff
pursuant to the above attachment upon the properties of
defendants, Downe Communications, Inc. and Edward R. Downe, Jr.,
are hereby vacated pending final determination of this motion
and the Sheriff is hereby directed to release said levies;
and sufficient cause appearing therefor, it is further

EXHIBIT 5 - 1ST MOTION BY DEFENDANT, DOWNE COMMUNICATIONS

ORDERED, that service of a copy of this order
and the annexed affidavits upon the plaintiffs' attorney
and the Sheriff of the City of New York, on or before
October 24, 1972, shall be sufficient service thereof.

Dated: October 24, 1972

RECORDED

J. S. C.

EXHIBIT 6 - MOTION BY DEFENDANT, DOWNE COMMUNICATIONS

At a Special Term, Part 1,
of the Supreme Court of the
State of New York, held in
and for the County of Bronx,
at the Courthouse, Grand
Concourse, Bronx, New York
on the 3rd day of October 1972.

P R E S E N T:

Honorable *Samuel R. Rosenberg,*

Justice.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

AL DAYON, individually and on behalf of MASTER-CRAFT ELECTRONICS CORP.,	:	Index No. 15225/72
Plaintiff,	:	
-against-	:	<u>ORDER TO SHOW CAUSE</u>
DOWNE COMMUNICATIONS, INC.,	:	
EDWARD R. DOWNE, JR.,	:	
CHEMICAL BANK, et al.,	:	
Defendants.	:	

Upon the order of attachment of property, of the defendants, Downe Communications, Inc. and Edward R. Downe, Jr., granted on or about August 14, 1972, and upon all the papers upon which said attachment was granted and all levies thereunder and all prior papers and proceedings herein and upon the annexed affidavit of Edward R. Downe, Jr., sworn to on the 30th day of October, 1972, let the plaintiffs and the Sheriff of the City of New York, show cause before this Court at a Special Term, Part 1 thereof, to be held at the County Courthouse, Grand Concourse,

EXHIBIT 6 - MOTION BY DEFENDANT, DOWNE COMMUNICATIONS

Bronx, New York, on the 1st day of November, 1972, at 9:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, why an order should not be granted vacating the said order of attachment setting aside any and all levies made thereunder pursuant to CPLR 6223 on the following grounds:*

- (1) the attachment order was procured by fraud in that the plaintiffs made false representations in their affidavit and verified complaint in support of said attachment order;
- (2) the papers, including the complaint upon which said order of attachment was granted are insufficient in that they do not set forth any causes of action in favor of the plaintiffs and against the defendants;
- (3) the papers do not comply with CPLR 6212(a) in that there is not shown by affidavit that there exists a cause of action against the defendants;

* We have asked in our companion motion that the attachment be vacated on an alternative ground as being unnecessary to the security of the plaintiffs. If the Court does not consider that ground on the companion motion then that ground and all papers submitted in support therefor shall be part of this motion.

EXHIBIT 6 - MOTION BY DEFENDANT, DOWNE COMMUNICATIONS

- (4) the papers do not set forth sufficient supporting evidentiary facts from which the Court can determine that a prima facie case exists and accordingly, the papers do not conform to CPLR 6212(a); and
- (5) the papers do not set forth in sufficient specificity facts and evidentiary materials to determine the amount of damages alleged;

and why an order should not be granted directing that the plaintiffs forthwith pay to the Sheriff all fees due and owing and for such other and further relief as may be just and proper together with costs and disbursements, including the defendants' attorneys' fees; and sufficient cause appearing therefor, it is further

ORDERED, that service of a copy of this order and ^{at their offices} the annexed affidavits upon the plaintiffs' attorney and the ^{at their office} Sheriff of the City of New York ~~on or before November 31, 1972.~~ shall be deemed sufficient service therefor.

DATED:

E N T E R,

J. S. C.

DECISION

SUPREME COURT : BRONX COUNTY

SPECIAL TERM : PART I

-----x
AL DAYON, individually and on behalf of
MASTER-CRAFT ELECTRONICS CORP.,

Plaintiff

-against-

DOWNE COMMUNICATIONS, INC.,
EDWARD R. DOWNE, JR., THE
CHEMICAL BANK, L.F. DOMMERICH CO., INC.
JOSEPH O. BARLOW, IRWIN NATOV,
ERIC M. JAVITS, REGAL ADVERTISING
ASSOCIATES CORP., CAMPBELL-REYNOLDS,
INC., ALEXANDER SALES CORP., JOHN
DOE, RICHARD ROE and RICHARD ROE,
INC., the last three names being
fictitious, true names being presently
unknown,

Index No.
15225/72

Defendants.

-----x
ROSENBERG, J.;

Defendants, Downe Communications Inc. and Edward R. Downe, Jr. have moved by two separate applications for an order vacating the ex parte order of attachment obtained by plaintiff on August 14, 1972 which permitted the attachment of property up to the amount of two million dollars belonging to either one or both of the two moving defendants.

Plaintiff has commenced this action against various defendants and has pleaded six separate causes of action all of which demand money damages. Plaintiff alleges that the defendants acting individually and jointly, conspired to defraud and divest him of his stock in Master-

DECISION

Craft-Electronics Corporation, breached a contract with him and with Master Craft and thereafter wasted and plundered the assets of Master Craft forcing it out of business.

Plaintiff contends that on or about December 26, 1968, Master Craft entered into an agreement with Downe Communications whereby the latter agreed to provide a specified amount of advertising space for use of Master Craft in return for which Master Craft would deliver to Downe Communications, Campbell-Reynolds, Inc. and Regal Advertising Associates, Inc. a total of 1,333,333 shares of its stock. Thereafter, the defendants fraudulently conspired to force the individual plaintiff herein to convey the shares that he owned in Master Craft in return for a specified number of shares in Alexander Sales Corporation, a subsidy of Downes Communications, Inc. After acquiring the shares of Master Craft, plaintiff was ousted as Chairman of the Board and the obligation of Downe Communications to furnish advertising space to Master Craft pursuant to the agreement of December 26, 1968 was cancelled. Subsequently the assets of Master Craft were plundered and misappropriated by the defendant.

At the present time plaintiff has attached in excess of one million dollars in bank accounts belonging to Downe Communications, Inc. No attachment has been made on the assets of Edward R. Downe, Jr.

Defendants contend that the order of attachment is improper and unnecessary and that it has seriously disrupted their business affairs and will cause them serious financial damage.

DECISION

Defendants' motions made pursuant to section 6223 CPLR are based on their allegations that the granting of the order of attachment, ex parte in the first instance was improper, that the alleged failure of plaintiff to comply with Rule 6212(d) CPLR requires a vacatur of the order and there is no need for an order of attachment in this case because of the financial solvency of defendant, Downe Communications Inc.

Section 6201 CPLR provides:

"An order of attachment may be granted in any action .. where the plaintiff has demanded and would be entitled, in whole or in part, or in the alternative, to a money judgment against one or more defendants when

1. the defendant is a foreign corporation ...
5. the defendant, in an action upon a contract express or implied, has been guilty of a fraud in contracting or incurring the liability, or ...
8. there is a cause of action to recover damages ... for fraud or deceit."

It is conceded that Downe Communications Inc. is a foreign corporation, incorporated in the State of Delaware. Although it is licensed to do business in New York, it still is deemed to be a foreign corporation within the meaning of section 6201(1) CPLR, and subject to attachment (*Marklin v. Drew*, D.C. N.Y. 1967, 280 F. Supp. 176; *Prentiss v. Greene*, 193 App. Div. 672; *Zeiberg v. Robesonics Inc.*, 43 Misc. 2d 134).

DECISION

Section 6211 CPLR provides:

"An order of attachment may be granted without notice, before or after service of summons and at any time prior to judgment"

Whether an order of attachment will issue in a particular case has traditionally been a question addressed to the discretion of the court and it is well established that upon a motion to vacate a warrant of attachment, the court may not consider the merits of the action and determine whether the plaintiff can succeed. Its function is to ascertain whether or not the plaintiff has made out a prima facie case and complied with the requisite jurisdictional requirement. (American Reserve Ins. v. China Ins., 297 N.Y. 322; Auerbach v. Grand National Pictures, 176 Misc. 1031, aff'd. without opinion, 263 App. Div. 712; Weinstein-Korn-Miller, Sec. 6201.03).

The court must give the plaintiff the benefit of all of the legitimate inferences and deductions that can be drawn from the facts stated. The truth of all of the facts stated by plaintiff must be assumed in the absence of clear proof to the contrary. (U.S. v. Brown, 247 N.Y. 211; Zale Jewelry Co. v. Laine, 37 Misc. 2d 39; Public Admin. of N.Y. v. Gallo, 20 Misc. 2d 388, aff'd without opinion, 9 A.D. 2d 884).

DECISION

As to defendant Edward R. Downe, Jr., it is apparent that the complaint is based upon the allegations of fraudulently inducing plaintiff to contract with certain defendants and making fraudulent representations which plaintiffs relied upon to their detriment, so as to entitle plaintiff to an order of attachment.

Defendant argues that an order of attachment is not necessary to protect the security of the plaintiff, on any judgment obtained and submits voluminous financial statements, affidavits and exhibits, purportedly showing the financial stability of the moving corporation. Plaintiff submits the affidavit of a certified public accountant alleging that the defendant corporation's debts exceeds its assets, which raises serious questions as to the corporation's present financial condition.

Movants have the burden of proving that the attachment is not necessary for the security of the plaintiff. They failed to meet this burden of proof. (Freedman v. Wilson Securities Corp., 31 A D 2d 789; Fuller Company v. Vitro Corporation of America, 26 A D 2d 916).

Defendants' contention that the attachment must be vacated because plaintiff failed to serve copies of the supporting papers upon which the attachment was granted pursuant to demand, in accordance with CPLR 6212 D is without merit.

DECISION

Plaintiff allegedly served the supporting papers upon defendants' attorneys by mail, on the day following the demand therefor and under all of the circumstances presented, vacatur of the attachment is unwarranted. (7A Weinstein-Korn-Miller, 6212.14).

Accordingly the motions are in all respects denied.

Settle order.

Dated: November 20, 1972

H.S.R.R.
J. S. C.

EXHIBIT 8 - ORDER

At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of Bronx, at the County Courthouse, Grand Concourse, Bronx, New York, on the 30th day of November, 1972

P R E S E N T :

HON. Samuel R. Rosenthal
Justice

AL DAYON, individually and on behalf
of MASTER-CRAFT ELECTRONICS CORP.,

O R D E R

Plaintiff,

Index No: 15225/72

-against-

DOWNE COMMUNICATIONS, INC., EDWARD
R. DOWNE, JR., et al.,

Defendants.

A motion having been made by defendants, Downe Communications, Inc. and Edward R. Downe, Jr., for an order vacating the order of attachment herein, dated and entered August 14, 1972 by order to show cause, dated October 23, 1972 on the ground that the plaintiff allegedly failed to comply with C.P.L.R. Section 6212 (d) to serve copies of the attachment papers, and that the attachment is unnecessary to the security of the plaintiff pursuant to C.P.L.R. Section 6223.

EXHIBIT 8 - ORDER

NOW, upon reading and filing the said order to show cause dated October 23, 1972 together with the affidavits of George R. Hinckley, sworn to October 21, 1972, of Francis A. Loughlin, sworn to October 23, 1972, of Harold J. Smith, sworn to October 23, 1972, of Richard B. Klarberg, sworn to October 21, 1972, together with exhibits annexed thereto, and the affidavits of George R. Hinckley, sworn to October 27, 1972, of Francis A. Loughlin, sworn to October 27, 1972, of Harold Smith, sworn to October 27, 1972, of Stuart M. Sieger, sworn to October 26, 1972, together with exhibits annexed thereto, and the affidavits of George R. Hinckley, sworn to October 24, 1972, of Francis A. Loughlin, sworn to October 24, 1972, of Robert L. Pau, sworn to October 24, 1972, together with exhibits attached thereto, all submitted in support of the said defendants' motion and the three affirmations of Charles Sutton, Esq., dated October 24, 1972, October 30, 1972 and October 30, 1972, and the affirmation of Leonard Bailin, dated October 30, 1972, submitted in opposition to said motion, and the matter having duly come on to be heard before this Court on October 31, 1972, and the defendants, Downe Communicat-

EXHIBIT 8 - ORDER

tions, Inc. and Edward R. Downe, Jr., having appeared by Javits & Javits, Esqs., by George R. Hinckley, Esq. and Harold J. Smith, Esq., and the plaintiff, Al Dayon, having appeared by Charles Sutton, Esq., and both sides having duly submitted the said motion on that day, and due deliberation having been had, and a written opinion having been duly made by the Court, and a decision in writing having been duly rendered by the Court, it is

ORDERED, that the motion be and the same hereby is in all respects, denied.

E N T E R

S/ S.R.R.
J.S.C.

EXHIBIT 9 - ORDER

At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of Bronx, at the County Courthouse, Grand Concourse, Bronx, New York, on the 30th day of November, 1972

P R E S E N T :

HON. Samuel R. Chonin
Justice

AL DAYON, individually and on behalf
of MASTER-CRAFT ELECTRONICS CORP.,

O R D E R

Plaintiff,

Index No: 15225/72

-against-

DOWNE COMMUNICATIONS, INC., EDWARD R.
DOWNE, JR., et al.,

Defendants.

A Motion having been made by defendants, Downe Communications, Inc. and Edward R. Downe, Jr., for an order vacating the order of attachment dated August 11, 1972 by order to show cause dated October 31, 1972 on the ground pursuant to C.P.L.R. Section 6223 that the attachment order was procured by fraud, that the papers including the complaint upon which the order of attachment was granted are insufficient in that they do not set forth any causes of action in favor of the plaintiff

EXHIBIT9 - ORDER

and against the defendants, that the papers do not comply with C.P.L.R. Section 6212 (a) in that there is not shown by affidavit that there exists a cause of action against the defendants, and that the order of attachment is unnecessary to the security of the plaintiff,

NOW, upon reading and filing the said order to show cause, dated October 31, 1972 together with the affidavits of Edward R. Downe, Jr., sworn to October 30, 1972, together with exhibits annexed thereto, and the affidavits of Edward R. Downe, Jr., sworn to November 6, 1972, of Emanuel Piller, sworn to November 3, 1972, of Irving Posner, sworn to November 3, 1972, of John B. Wynne, sworn to October 31, 1972, of Eric M. Javits, sworn to November 6, 1972, of Robert J. Logan, sworn to November 3, 1972, all submitted in support of the said defendants' motion and the affirmation of Charles Sutton, dated November 3, 1972 and of H. John Gluskin, dated November 3, 1972, and the affidavit of Al Dayon, sworn to November 3, 1972, and the letter of Charles Sutton, Esq. to the Court, dated November 3, 1972, all submitted in opposition thereto, and the matter having duly come on to be heard on November 1, 1972, and Javits

EXHIBIT 9 - ORDER

& Javits, Esqs., by George R. Hinckley, Jr., Esq. and Harold J. Smith, Esq., having appeared for the defendants, Downe Communications, Inc. and Edward R. Downe, Jr. and Charles Sutton, Esq., having appeared for the plaintiff, Al Dayon, and both sides having duly submitted on the motion, and due deliberation having been had, and a written opinion and decision having been duly made and rendered by the Court, it is

ORDERED, that the motion be and the same hereby is in all respects, denied.

E N T E R

A. S. C.
J.S.C.

EXHIBIT 10 - MOTION

At a Special Term, Part I,
of the Supreme Court of the State
of New York, held in and for
the County of Bronx, at the
County Courthouse, Grand Concourse,
Bronx, New York, on the 27th day
of November, 1972.

P R E S E N T:

Honorable BERNARD NADEL
Justice.

-----X
AL DAYON, Individually and on behalf
of MASTER-CRAFT ELECTRONICS CORP.,

Plaintiffs,

-against-

DOWNE COMMUNICATIONS, INC.,
EDWARD R. DOWNE, JR., THE CHEMICAL
BANK, L. P. DOMMERICH CO., INC.,
JOSEPH O. BARLOW, IRWIN NATOV,
ERIC M. JAVITS, REGAL ADVERTISING
ASSOCIATES CORP., CAMPBELL-REYNOLDS,
INC., ALEXANDER SALES CORP., JOHN
DOE, RICHARD ROE and RICHARD ROE,
INC., the last three names being
fictitious, true names being
presently unknown,

: Index No. 15225/72

: ORDER TO SHOW CAUSE

Defendants.
-----X

Upon the decision herein of the Honorable Samuel R.
Rosenberg, a Justice of this Court, filed in the office of
the County Clerk on November 22, 1972, denying companion
motions by the defendants, Downe Communications, Inc. and
Edward R. Downe, Jr., to vacate the order of attachment and
levies thereunder against the properties of these defendants.

EXHIBIT 10 MOTION

and on reading and filing the annexed affidavits of George R. Hinckley, Esq. and Luther V. Haggerty, both sworn to on the 27 day of November, 1972, with exhibits annexed thereto, and upon the order of attachment and levies thereunder and all other papers heretofore had and served herein, it is

ORDERED, that the plaintiffs show cause before this Court, at a Special Term, Part I thereof, to be held at the Courthouse located at Grand Concourse, Bronx, New York, on the 27th day of November, 1972, at 9:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, why an order should not be made pursuant to CPLR 2221, granting leave to renew defendants' companion motions to vacate the order of attachment and levies thereunder, on the grounds that new facts have been discovered after full submission of these motions before the Court, and in the event that such leave is granted, that such renewal will then and there proceed, and that upon such renewal that this Court shall enter an order granting said motions of the defendants and thereby vacating the order of attachment, or in the alternative, modifying and limiting the attachment as set forth herein, and setting aside any and all levies made thereunder, and directing that the plaintiffs forthwith pay to the Sheriff all fees due and owing and for such other and further relief as may be just and proper together with costs and disbursements, including the defendants' attorneys' fees.

Sufficient reason appearing therefor, let service of a copy of this order and the papers upon which it is granted

5

EXHIBIT 10 - MOTION

at his office
upon the attorney for the plaintiffs herein, and upon the
Sheriff of the City of New York, on or before the 28th day of
November, 1972, be deemed sufficient.

E N T E R,

Bernard Nadel
J. S. C.

EXHIBIT 11 - ORDER

New motion added 11/29 #18

*T.S.C.
11/29/72
Served Mail*

NEW YORK SUPREME COURT—COUNTY OF BRONX

SPECIAL TERM, PART I.

Al Dayton, et al., etc.,

*Downe Communications, Inc.
et. al.,*

INDEX NUMBER 15225/72

Present:

Hon. Samuel R. Lazarus
Justice.

The following papers numbered 1 to
 read on this motion *submitted & rejected*
 this 29 day of November 1972
 Calendar No. 18

Notice of Motion and Affidavits Annexed.....

PAPERS NUMBERED

1-5

Order to Show Cause and Affidavits Annexed *& exhibits*.....

6-7

Answering Affidavits.....

Replying Affidavits.....

Affidavits *attached order filed 11/15/72*

8

Filed Papers (County Clerk's Office) OSC *filed 11/1/72*

9

Orders & attached papers fil. 11/22/72

10, 11

Notice of Examination and Pleadings.....

Exhibits.....

Copies Papers.....

Referee's Report.....

Stenographer's Minutes.....

Stipulation.....

EXHIBIT 11 - ORDER

Upon the foregoing papers for renewal of a motion to vacate an order of attachment is denied. Section 1312 (a) of the Business Corporation Law, cited by the movants deals with the disability of a foreign corporation to sue in this State, but does not apply to the individual plaintiff here.

However, in view of the fact that plaintiff admits that funds , belonging to defendant in excess of \$2,000,000 authorized by the order dated August 14, 1972 have been attached at various banks, the sum in excess of the authorized amount shall be released. Settle Order.

Dated December 12, 1972

/s/ S.R.R.
J.S.C.

EXHIBIT 11

EXHIBIT 12 = ORDER TO SHOW CAUSE

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

-----X
DOWNE COMMUNICATIONS, INC. :
and EDWARD R. DOWNE, JR., :
Defendants-Appellants, :
--against-- :
AL DAYON, Individually and on behalf :
of MASTER-CRAFT ELECTRONICS CORP., :
NOTICE OF MOTION
FOR STAY PENDING
APPEAL, AND FOR
EXPEDITED APPEAL
Plaintiffs-Respondents. :
-----X

S I R:

PLEASE TAKE NOTICE that, upon the annexed affidavits of Francis A. Loughlin and George R. Hinckley, Esq., both sworn to on the 30th day of November, 1972, and upon the orders made by Honorable Samuel R. Rosenberg, Justice, on the 30th day of November, 1972, and all the papers upon which the same were granted and entered in the office of the Clerk of the County of Bronx on the 30th day of November, 1972, denying the defendants' companion motions for an order vacating an order of attachment and levies thereunder against the properties of the above defendants, the Notices of Appeal from said orders, filed in the office of the Clerk of the County of Bronx, on the 30th day of November, 1972, and served upon the attorney for the plaintiffs-respondents and the Sheriff of the City of New York on the same day, and upon the order of attachment and levies thereunder and all of the pleadings and proceedings heretofore had herein, the undersigned

EXHIBIT 12 - ORDER TO SHOW CAUSE

will move this Court on the 3rd day of December, 1972, at the Courthouse located at Madison Avenue and 25 Street, New York, New York, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order pursuant to CPLR 5519(c), staying the enforcement of the orders entered in the office of the Clerk of Bronx County on the 30th day of November, 1972, and staying the plaintiffs-respondents and the Sheriff of the City of New York from any and all proceedings in respect of the above order of attachment and levies thereunder pending final determination of this appeal and for an order that this appeal be set down on an expedited basis on the original record for the December 20 term of this Court.

PLEASE TAKE FURTHER NOTICE, that an interim stay is hereby requested pending final determination of this motion.

Dated: New York, New York
November 30, 1972

Yours, etc.,

JAVITS & JAVITS
Attorneys for Defendants-Appellants
1345 Avenue of the Americas
New York, New York 10019
Tel.: 212-586-4050

TO:

CHARLES SUTTON, ESQ.
Attorney for Plaintiffs-Respondents
299 Broadway
New York, New York 10007

SHERIFF OF THE CITY OF NEW YORK
31 Chambers Street
New York, New York 10007

EXHIBIT 12 - ORDER TO SHOW CAUSE

Pending determination of this motion (returnable December 5, 1972) APPLICATION FOR STAY OF ATTACHMENT IS DENIED.

Dated : New York, N. Y. December 1, 1972

/s/ A.S.
ASSOCIATE JUSTICE ARON STEUER

Service of these motion papers (returnable December 5, 1972) on or before 5:00 P.M. on December 5, 1972 shall be deemed sufficient; answering papers are to be served and filed on or before 10:00 A.M. December 5, 1972.

Dated : New York, N.Y. December 1, 1972.

/s/ A.S.
ASSOCIATE JUSTICE ARON STEUER

EXHIBIT 13 - ORDER

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on December 12, 1972

Present—Hon. Harold A. Stevens, Presiding Justice,
Arthur Markewich,
Theodore R. Kupferman,
George Tilzer,
Louis J. Capozzoli, Justices.

-----X
Al Dayon, individually and on behalf :
of Mastercraft Electronics Corp., :
Plaintiff-Respondent, :
-against- : M-10959
Downe Communications, Inc. and :
Edward R. Downe, Jr., :
Defendants-Appellants, :
Chemical Bank, et al., :
Defendants. :
-----X

The above-named defendants-appellants having moved this
(1) Court for an order/staying the execution and enforcement of two
orders of the Supreme Court, Bro x County, each entered on November 30,
1972, pending the hearing and determination of the appeals taken by
defendants-appellants from said orders, (2) staying all further
proceedings in connection with the order of attachment of said court,
dated August 14, 1972, and all levies thereunder, and (3) and granting

EXHIBIT 13 - ORDER

a preference in the hearing of said appeals upon the original record,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the affidavits of George R. Hinckley and Francis A. Loughlin, respectively, and the statement of Harold J. Smith, in support of said motion, and the statements of Charles Sutton in opposition thereto, and after hearing Messrs. George R. Hinckley and Harold J. Smith for the motion and Mr. Charles Sutton opposed,

It is ordered that said motion, ^{insofar as it seeks a stay,} be and the same hereby is denied. Said motion, insofar as it seeks a preference upon the original record, is granted so as to permit the appeal to be heard on the original record and upon typewritten or reproduced appellants' points, appellants to procure the original record and appellants' points to be served and filed on or before December 20, 1972, with dates of issue for the January 1973 Term of this Court, with respondent's points to be served and filed on or before January 4, 1973, and reply points, if any, to be served and filed on or before January 11, 1973.

ENTER:

EDWARD W. GAMSG

Clerk.

EXHIBIT 14 - DECISION

Stevens, P.J., Nunez, Kupferman, Steuer, Tilzer, JJ.

6323 Al Dayon, individually and on behalf
6323-A of Master-Craft Electronics Corp.,
6323-B Plaintiff-Respondent, C.Sutton

-against-

Downe Communications, Inc., et ano.,
Defendants-Appellants, B.Botein

-and-

The Chemical Bank, et al.,
Defendants.

Two orders of the Supreme Court, Bronx County (Rosenberg, J.), each entered on November 30, 1972, denying motions to vacate warrant of attachment, and order of said court entered on December 27, 1972, which denied a motion to renew, unanimously reversed, on the law and the facts, and the motions granted. Appellants shall recover of respondent \$60 costs and disbursements of these appeals.

As to the first four causes of action pleaded, the complaint is patently deficient. In addition, as to these and the remaining causes of action, plaintiff, when challenged by the motion to vacate, failed to come forward with any evidentiary facts to sustain his conclusory allegations. Furthermore, there is grave doubt as to whether an attachment is needed to secure plaintiff and whether the material submitted was deceptive.

Order filed.

EXHIBIT 15 - ORDER DATED FEBRUARY 13, 1973

At a term of the Appellate Division of the Supreme Court held in and for the City of New York in the County of New York, on February 13, 1973

Present--Hon. Harold A. Stevens, Presiding Justice,
Emilio Munez,
Theodore R. Kupferman,
Aron Steuer,
George Tiller,
Associate.

AJ Dayon, Individually and on behalf :
of Master-Craft Electronics Corp., Plaintiff-Respondent,

against

Downe Communications, Inc., and :
Edward R. Downe, Jr., Defendants-Appellants,

and-

The Chemical Bank, L.P. Doemerich Co., Inc., Joseph O. Barlow, Irwin Natov, Eric H. Javits, Regal Advertising Associates Corp., Campbell-Reynolds, Inc., Alexander Sales Corp., John Doe, Richard Roe and Richard Roe, Inc., the last three names being fictitious, true names being presently unknown, Defendants.

6323
6323-A
6323-B

Appeals having been taken to this Court by the above-named defendants-appellants from two orders of the Supreme Court, Bronx County (Rosenberg, J.), each entered on November 30, 1972, denying motions to vacate warrant of attachment, and from the order of said court entered on December 27, 1972, which denied a motion to renew,

EXHIBIT 15 - ORDER DATED FEBRUARY 13, 1973

And said appeals having been argued by Mr. Bernard Botein of counsel for appellants, and by Mr. Charles Sutton of counsel for respondent; and due deliberation having been had thereon, and upon the memorandum decision of this Court filed herein,

It is unanimously ordered that the orders so appealed from be and the same hereby are reversed, on the law and the facts, and the motions granted. Appellants shall recover of respondent \$60 costs and disbursements of these appeals.

ENTER:

LAWRENCE H. GOODMAN

Clerk.

EXHIBIT 16 APPLICATION OF DAYON

SUPREME COURT : STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

- - - - - X
AL DAYON, individually and on behalf of :
Master-Craft Electronics Corporation,

: Plaintiff-Respondent,

v.

:
ECYNE COMMUNICATIONS, INC.
EDWARD R. DONNE, JR.,

: Defendants-Appellants,

:
CHEMICAL BANK, et al.,

: Defendants.

- - - - - X

Upon reading and filing the affirmation of Charles Sutton dated February 15, 1973, a motion will be made at a term of this Court to be held at the Courthouse , 25th Street and Madison Avenue, New York, New York why an order should not be made allowing an appeal to the Court of Appeals and certifying the following question : " Was the order dated February 13, 1973 vacating the order of attachment correctly made ? " and why the plaintiff-respondent should not have such other and further relief as may be proper.

CHARLES SUTTON
Attorney for Plaintiff-Respondent
299 Broadway
New York, New York 10007

EXHIBIT 16 APPLICATION OF DAYON

Pending determination of this motion (returnable February 20, 1973) APPLICATION TO STAY VACATUR OF ORDER OF ATTACHMENT IS GRANTED.

Dated : New York, N.Y. February 16, 1973

/s/ A.S.
ASSOCIATE JUSTICE ARON STEUER

Service of these motion papers (returnable February 20, 1973) on or before 5:00 P.M. on February 20, 1973 shall be deemed sufficient, answering papers are to be served and filed on or before 10:00 A.M. February 20, 1973

Dated : New York, N.Y. February 16, 1973

/s/ A.S.
ASSOCIATE JUSTICE ARON STEUER

EXHIBIT 17 ORDER DATED FEBRUARY 21, 1973

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on February 21, 1973.

Present—Hon. Harold A. Stevens, Presiding Justice,
Emilio Naranjo,
Theodore H. Kupferman,
Arnold Steinber, Justice,
George Miller, Justice.

Al Bayon, individually and on behalf of
Master-Craft Electronics Corporation,
Plaintiff-Respondent,
—against—
Downe Communications, Inc., Edward R.
Downe, Jr., Defendants-Appellants,
Chemical Bank, et al.,
Defendants.

4-451

The above named plaintiff-respondent

having moved for leave to appeal to the Court of Appeals from the order of
this Court entered on February 13, 1973,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the
statements of Charles Sutton

EXHIBIT 17 ORDER DATED FEBRUARY 21, 1973

in support of said motion, and the affidavit of Bernard Botein
in opposition thereto, and after hearing Mr. Charles Sutton
for the motion, and Mr. Bernard Botein
opposed,

\$20

It is ordered that said motion be and the same is hereby denied with \$20 costs. The stay
dated February 10, 1973, affixed to the notice of motion, is vacated.

ENTER:

JOSEPH J. LUCCHI
CLERK

EXHIBIT 18 - MEMORANDUM DECISION

DECISION COURT OF APPEALS

Mo. No. 451

Al Dayon, Individually and on
behalf of Master-craft Elec-
tronics, Corp.,

Appellant,

v.

Downe Communications, Inc.,
& ors. etc.,

Respondents.

Motion to dismiss the appeal granted and
the appeal dismissed, with costs and ten
dollars costs of motion, upon the
ground that the prior order of the
Appellate Division was not one which
necessarily affected the final judgment
appealed from. (CPLR 5601(d) ; see
Buffalo Electric Co. v. State of New
York, 14 N Y 2d 453, 457-458; see also
Cohen and Karger, Powers of the New
York Court of Appeals §79.)

EXHIBIT 19 - AFFIRMATION

SUPREME COURT : BRONX COUNTY

- - - - - X

AL DAYON, etc.,

Plaintiff,

-against-

DOWNE COMMUNICATIONS, INC.,
et al.,

Defendants.

- - - - - X

CHARLES SUTTON, an attorney duly admitted to practice law in the State of New York, affirms under penalty of perjury as follows:

1. The Treasurer of DOWNE COMMUNICATIONS, INC., alleged in his affidavit sworn to October 23, 1972, at pages 3 and 4, that:

"Downe Communications, Inc. has assets in the millions in New York State. The recent registration statement filed with the Securities & Exchange Commission in connection with the public offering of Downe Communications, Inc., of which Edward H. Downe, Jr., was the primary selling stockholder, demonstrates conclusively that there is simply no need whatsoever to attach and tie up two million dollars of assets of the above defendants for security in the event of a judgment entered therein. In this regard, I am filing a copy of this registration statement with the Court".

EXHIBIT 19 AFFIRMATION

2. MR. FRANCIS A. LOUGHLIN, the said Treasurer of DOWNE COMMUNICATIONS, INC., did not describe or identify a single one of those millions of assets in the State of New York. MR. LOUGHLIN also failed to mention the millions in liabilities of this company. MR. LOUGHLIN sought to give the impression that the recitations and claims made in the prospectus dated July 25, 1972, and in any other filings with the Securities & Exchange Commission have the stamp of approval of the Securities & Exchange Commission as to the accuracy and as to the authenticity of the claims made in such filings including the prospectus. Nothing is further from the truth.

3. The registration statement of DOWNE COMMUNICATIONS, INC., dated July 25, 1972, which has been filed with this Court, has emblazoned across its front page in bold black printing the following:

"These securities have not been approved nor disapproved by the Securities & Exchange Commission, nor has the Commission passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense."

4. MR. LOUGHLIN in his affidavit sworn to October 24, 1972, makes the claim at page 2 that:

EXHIBIT 19 - AFFIRMATION

". . . (the) annexed prospectus shows (sic), Downe Communications, Inc., had total assets of \$26,566,962.00, and a net worth of \$20,936,092.00 for the year ended December 31, 1971."

5. MR. LOUGHLIN claims in that same affidavit at page 2 as follows:

". . . The prospectus, the balance sheet at page 72 shows that the net worth of Downe Communications, Inc., was increased by \$2,000,000.00 to \$22,818,657.00 as of March 31, 1972, based upon unaudited figures."

6. MR. LOUGHLIN thus claims that in a three months period, DOWNE COMMUNICATIONS, INC., increased its net worth by

\$2,000,000.00, which is an extraordinary feat. However, this Court must remember that that figure is unaudited, that is to say, it is merely a company made, self serving statement, which is unchecked and unverified even by their own accountants, who in the ordinary course of events would only check the figures from the companies own records.

7. MR. LOUGHLIN later on in that affidavit asserts that as of August 14, 1972, the net worth of DOWNE COMMUNICATIONS INC., had risen over \$7,000,000.00 above the December 31, 1971 statement. This figure is an even more extraordinary feat. This figure of course is unaudited.

EXHIBIT 19 - AFFIRMATION

8. The fact that these figures were submitted to the Securities & Exchange Commission does not in any way indicate that the Securities & Exchange Commission either examined, or checked the figures in any way. The usual practice of the SEC is that they do not.

9. It is interesting to note that the prospectus at page 64 beginning the fifth line from the bottom states the following:

"The company has agreed on behalf of all selling stockholders except Edward R. Downe, Jr., to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933. Edward R. Downe, Jr., has agreed to similarly indemnify the underwriters."

10. The prospectus at page 58 provides at the top of the page the following:

"The company has agreed to indemnify certain of the selling stockholders against certain liabilities, including liabilities under the Securities Act of 1933."

11. What is referred to in those indemnification provisions is an indemnification for fraud in the sale of the stock. This indemnification is made by DOWNE COMMUNICATIONS, INC.,

EXHIBIT 19 - AFFIRMATION

notwithstanding that it will not and has not received any money whatever from the sale of this stock by individual selling stockholder the majority of the selling stockholders being EDWARD R. DOWNE, JR.. Indeed, not only does DOWNE COMMUNICATIONS, INC., not receive any money from the sale of the stock, it has paid an estimated \$260,000.00 of expenses for the sale of stock by the individual stockholders. (Prospectus face page item numbered (2).)

12. MR. LOUGHIN, in his final affidavit sworn to October 27, 1972, begins to let the cat out of the bag. In that affidavit, MR. LOUGHIN admits that all of the BARTELL MEDIA CORPORATION stock which is owned by DOWNE COMMUNICATIONS, INC., is pledged with Bank of New York and First National City Bank for a loan by those banks to DOWNE COMMUNICATIONS, INC.. He also admits that "other" assets are also pledged to those banks. On the other hand he claims that notwithstanding, DOWNE COMMUNICATIONS, INC., has an "equity of \$13,000,000.00 which the Sheriff's levy has reached", and that "the above banks are presently holding DCI tangible assets in excess of \$20,000,000.00".

13. MR. LOUGHIN, unfortunately is being less than truthful with this Court and he is in fact playing fast and loose with the facts.

EXHIBIT 19 - AFFIRMATION

14. I have asked MR. LEONARD BAILIN, an attorney and a Certified Public Accountant to examine the prospectus at issue and to tell me what the true facts are as to the financial condition of DOWNE COMMUNICATIONS, INC..

15. MR. BAILIN, as his affidavit sworn to October 30, 1972 shows, has found that, from that prospectus dated July 25, 1972 alone which was prepared by DOWNE COMMUNICATIONS, INC., that:

"The financial position of the consolidated companies is an excess of liabilities over real assets in the amount of \$2,171,000.00, even if inventory, receivables, and prepaid items are realizable in full.

The significance of the pending law suits with claims of damages in the tens of millions of dollars cannot be overlooked. (See, note 11, prospectus consolidated balance sheets pages 38-89)."

16. The prospectus itself shows that far from having a net worth, DOWNE COMMUNICATIONS, INC., has an excess of liabilities over real assets in the amount of \$2,171,000.00.

17. By the defendants own admissions in the affidavits presented to this Court, it is a "holding company". Its assets consist of the ownership of the stock of subsidiary corporations. In this case, DOWNE COMMUNICATIONS, INC., by its own admission has "pledged with the banks the capital stock of substantially all

EXHIBIT 19 - AFFIRMATION

of its subsidiaries, its holdings of approximately 40% of the issued and outstanding common stock of BARTELL MEDIA CORPORATION and certain securities received by the company (DOWNE) in connection with the sale of advertising and in connection with the disposition of certain businesses". In addition, substantially all of the subsidiaries have guaranteed the obligations of the company (DOWNE) to the banks. (Prospectus dated July 25, 1972 page 41).

18. DOWNE COMMUNICATIONS, INC., is actually in debt over its head to First National City Bank and Bank of New York and to others.

19. The only assets which this foreign corporation, DOWNE COMMUNICATIONS, INC., has in this state is some cash. Cash is highly transitory and can be made to disappear from this corporation's accounts in a moment. It is notable that in the balance sheet for DOWNE COMMUNICATIONS, INC., as of March 31, 1972, as it appears in the prospectus on page 72, that corporation had no cash in the banks. There is a cash figure that appears in the consolidated balance sheet as of March 31, 1972, at prospectus page 68. That figure is unaudited. This cash is cash that comes from the subsidiaries or belongs to the subsidiaries.

EXHIBIT 19 - AFFIRMATION

20. That the Sheriff was able to levy upon money at the Bank of New York and other banks belonging to defendant DOWNE COMMUNICATIONS, INC., was merely a stroke of luck. That defendant DOWNE COMMUNICATIONS, INC., recently sold one of its companies for \$5,600,000.00 as stated in its prospectus at page 84. Under the agreement by DOWNE COMMUNICATIONS, INC., with its lending banks, DOWNE COMMUNICATIONS, INC., was required to apply all of these proceeds to the payment of the outstanding debt to them. However, this corporation somehow persuaded the banks to require payment of only three million dollars out of the five million six hundred thousand dollars and persuaded those banks to keep the outstanding loan arrangements unreduced, as shown at page 84 of the prospectus, in particular at the last few lines of note 6(c), which appears on the first paragraph of that page. Except for that maneuvering by DOWNE COMMUNICATIONS, INC., it would not have had that cash at hand in the banks and the plaintiff would not have been able to attach those sums.

21. DOWNE COMMUNICATIONS, INC., has not declared or paid a single dividend since it was organized in 1967 (Prospectus pages 3 and 8.)

EXHIBIT 19 - AFFIRMATION

22. The prospectus dated July 25, 1972 shows that this foreign corporation is losing money, and has been losing money for some time.

23. The prospectus at page 15, about the middle of the page, asserts that

"Since 1969 Bartell's Broadcasting operations have constituted the primary source of income from continuing operations."

24. The prospectus however, notes at page 15 that since 1970 there has been a "decline in income", and that there has been "lower net revenues", and that "Bartell believed that these factors will continue to adversely affect Bartell's revenues and income during the three months ended June 30, 1972." See also prospectus pages 10 and 11.

25. The prospectus again at page 43 shows a decline in income for Bartell and that "Bartell believes that these factors will continue to affect Bartell's publishing revenues and income during the three months ended June 30, 1972.

26. The prospectus shows at page 72, that DOWNE COMMUNICATIONS, INC., had a deficit as of December 31, 1971 of \$7,131,789.00. It also shows that as of March 31, 1972, it had a deficit of \$5,249,224.00. This latter figure it must be noted, is an unaudited figure.

EXHIBIT 19 - AFFIRMATION

27. The consolidated balance sheet on page 72 of the prospectus carries BARTELL MEDIA CORPORATION stock as an asset of DOWNE COMMUNICATIONS, INC., as of December 31, 1972, at \$11,892,570.00. It carries that same item as of March 31, 1972 (unaudited) valued at \$11,979,668.00.

28. MR. LOUGHLIN, on the other hand, admits in his affidavit sworn to October 27, 1972 at page 2, that the "approximate present market value (of BARTELL MEDIA CORPORATION) on the American Stock Exchange is . . . three million dollars). The defendant DOWNE COMMUNICATIONS, INC., thus has over valued the BARTELL "asset" on its consolidated balance sheet by \$8,979,668.00. MR. LOUGHLIN admits that DOWNE COMMUNICATIONS does not even have that stock any more since it pledged all of the BARTELL stock held by it, and everything else it owns, to the two banks named as collateral for an outstanding loan.

29. The prospectus at page 83 admits that DOWNE COMMUNICATIONS, INC., is not in compliance with the bank loan agreement requirement as to "net worth and other requirements". See also at page 42, top of the page. The prospectus at page 41 about the middle of the third paragraph, recites that the "loan

EXHIBIT 19 - AFFIRMATION

agreement requires that the company maintain a consolidated tangible net worth, as defined, in an amount in excess of \$11,000,000.00".

30. The prospectus at page 47 notes that BARTELL itself has pledged out to banks all of its stock, to wit: "BARTELL has pledged all of the capital stock of its Broadcast subsidiaries owning AM Radio Stations to secure repayment of institutional and term bank loans."

31. The prospectus at page 84 notes that DOWNE COMMUNICATIONS, INC., has "pledged its unregistered shares of common stock and its shares of substantially all of its subsidiary companies".

32. DOWNE COMMUNICATIONS, INC., has no assets that it can call its own. It has no net assets over liabilities which could be described as saleable and for which cash could be realized.

33. MR LOUGHLIN, in his affidavit sworn to October 27, 1972, at page 2, cited the specific figure of \$16,221,011.00, as the value of its subsidiary corporations as of March 31, 1972, which he admits are all pledged to the bank.

EXHIBIT 19 - AFFIRMATION

34. An examination of the prospectus shows however, that the \$16,221,011.00 is not an asset at all, but is a monument to the bad business judgment of DOWNE COMMUNICATIONS, INC. That figure represents the overpayment in the purchase price over the value of the businesses purchased by DOWNE COMMUNICATIONS, INC. (Prospectus pages 75 to 77) The defendants in the consolidated balance sheet at prospectus page 72 transformed this enormous loss and this monument to bad business judgment into an asset.

35. Prospectus page 72 shows that this figure of \$16,221,011.00 appears next to the designation "investment in and advances to consolidated subsidiaries -- (notes 1 and 6), as the second item of assets on that page out of the six major items of assets claimed. A reference to notes 1 shows that \$9,334,638.00 of that amount of \$16,221,011.00 is wrapped up in the title as follows, "publishing rights and good will" to the extent of \$8,224,633.00 and "consumer products group" in the amount of \$1,110,005.00. Note 1, at pages 75 to 77 recites the various companies in which DOWNE COMMUNICATIONS made gross overpayments of purchase price over value in the different companies with the result that this figure of \$9,334,638.00 was created. Prospectus note 6, at page 83 and 84, apparently represents the balance of this \$16,221,011.00. Note 6 is entitled "long term debt". Thus

EXHIBIT 19 - AFFIRMATION

out of losses and bad deals and long term debts, DOWNE COMMUNICATIONS creates \$16,221,011.00 in "assets". These assets plainly are not saleable and none of them can realize any money for the corporation. This is the kind of funny balance sheet that DOWNE COMMUNICATIONS, INC. has presented in its prospectus.

36. BARTELL in a single purchase of a radio station overpaid the amount of \$1,157,140.00. (Prospectus page 96). Bad business judgment is endemic in DOWNE COMMUNICATIONS, INC. and BARTELL MEDIA CORP.

37. As noted above DOWNE COMMUNICATIONS, INC., is not in compliance with the net worth requirements of the loan agreement with the banks. (Prospectus page 83). This non-compliance not only shows a bad financial condition of the corporation but it places the corporation in a further bad position because as noted at page 83 of the prospectus, it costs the corporation a substantial amount of money for this default, to wit:

"At December 31, 1971, the company and its major subsidiaries were not in compliance with the net worth and certain other requirements contained in the term loan agreement dated February 5, 1971, for \$4,500,000.00, which was due February 5, 1973. However, the lender waived the non-compliance and amended such agreement

EXHIBIT 19 - AFFIRMATION

on April 7, 1972, effective December 31, 1971. Interest on this loan was 1% per annum over the bank's prime rate up to May 10, 1971, and thereafter at 2% above such prime rate." (underscoring added)

38. A mere perusal of the prospectus shows that this corporation is a looser, and MR. EDWARD R. DOWNE, JR., apparently agrees.

39. MR. EDWARD R. DOWNE, JR., who is or was the major stockholder in DOWNE COMMUNICATIONS, INC., certainly has not shown any confidence in DOWNE COMMUNICATIONS, INC. In 1969, he caused DOWNE COMMUNICATIONS, INC., to issue a secondary stock offering to the public of DOWNE COMMUNICATIONS stock which consisted in large part of the stock owned by him. He sold thousands of his shares of stock to the public.

40. In July - August 1972, EDWARD R. DOWNE, JR. sold 481,000 shares of his stock in DOWNE COMMUNICATIONS, INC. This number of shares of stock constituted more than 59% of the total secondary offering represented by the prospectus of July 25, 1972.

That offering represented only a personal benefit for EDWARD R. DOWNE, JR., the net price as I am informed for each share of stock was approximately \$7.00. The proceeds to MR. DOWNE was therefore over \$3,000,000.00. None of those proceeds were paid to or benefited DOWNE COMMUNICATIONS, INC. in any way. Quite the

E XHIBIT 19 - AFFIRMATION

centrally, as noted above the sale on the secondary offering of stock of DOWNE COMMUNICATIONS, INC., was made at the expense of DOWNE COMMUNICATIONS, INC. to the amount of over \$260,000.00 (See face page prospectus dated July 25, 1972.)

41. The members of the BARTELL family, who undoubtedly benefited personally along with MR. EDWARD R. DOWNE in the acquisition of BARTELL MEDIA CORPORATION by DOWNE COMMUNICATIONS, INC. (See prospectus pages 48 to 50), were also selling stockholders. None of the proceeds from the sale of the stock held by these BARTELL family members were of any benefit to DOWNE COMMUNICATIONS, INC. Plainly, if insider major stockholders like EDWARD R. DOWNE, JR. and the BARTELL family sell out their share holdings, can any outsiders have any confidence in DOWNE COMMUNICATIONS, INC.

42. The prospectus shows law suits other than that at bar pending against DOWNE COMMUNICATIONS, INC. In each instance, the opinion of JAVITS & JAVITS, ESQS. is that "said claims will not result in a judgment which would have a material adverse effect on the company". This is a most extraordinary legal opinion in the face of a negative real asset value of over \$2,000,000.00 for this company; that is to say in the face of the fact that the company has no assets. Any judgment in such a

EXHIBIT 19 - AFFIRMATION

circumstance would have a material adverse effect on this company.

43. The prospectus shows at pages 43 and 50 that BARTELL is being sued in Kentucky for millions of dollars in damages by FAWCETT PUBLICATIONS, and that it is being sued also by others, including the Union.

44. The prospectus at page 60 shows that BARTELL and DOWNE COMMUNICATIONS, INC., and EDWARD R. DOWNE, JR., individually are being sued by stockholders of BARTELL "alleging undue influence by the company (DOWNE) over BARTELL by reason of its ownership of 40% of BARTELL'S outstanding common stock in connection with (I) alleged overpayment by BARTELL for purchase of two FM stations . . . for \$125,000.00 and \$500,000.00 cash, respectively; and alleged personal benefit by control persons of the company (DOWNE) and STORER BROADCASTING, INC., (II) alleged depletion of BARTELL cash through slow payments of sums due from the company (DOWNE); (III) alleged use of BARTELL cash in compensating balances for the company; (IV) alleged diversion of gross profits of a joint venture between the company (DOWNE) and a BARTELL subsidiary.

EXHIBIT 19 - AFFIRMATION

45. The prospectus shows at page 61, that "DIVERSIFIED PRINTING CORPORATION commenced a law suit in United States District Court for the Eastern District of Pennsylvania seeking \$4,095,000.00 in damages. . .".

46. Not only is this attachment necessary, it is insufficient and it is plainly the only way that the plaintiff will be able to collect even a part of its judgment.

47. DOWNE COMMUNICATIONS, INC. appears basically to have been used by MR. EDWARD R. DOWNE, JR. for his own personal benefit to inflate the value of the shares of DOWNE COMMUNICATIONS, INC. then to make a secondary offering of his own stock so as to sell that stock and pocket the millions of dollars of proceeds therefrom. MR. EDWARD R. DOWNE, JR. is well paid by the corporation and the prospectus shows at page 53 that he receives a salary of \$160,000.00 annually.

48. In regard to the merits of the action there can be absolutely no question that the defendant DOWNE COMMUNICATIONS, INC. wrongfully and willfully breached its written contract with MASTERCRAFT dated December 26, 1968, to deliver two million dollars of advertising space in its magazines to MASTERCRAFT. (Letter from DOWNE COMMUNICATIONS, INC. dated June 4, 1970 to MASTERCRAFT attached as an exhibit to the complaint.)

EXHIBIT 19 - AFFIRMATION

49. As set forth and shown in the papers submitted in support of the order of attachment, there was absolutely no basis for DOWNE COMMUNICATIONS, INC. to claim that MASTERCRAFT had breached the contract. There was no duty on the part of MASTERCRAFT to register the unregistered stock it had delivered to DOWNE COMMUNICATIONS, INC. by the date of May 31, 1970 as DOWNE COMMUNICATIONS, INC. claims. A reference to the amendment to that contract dated January 8, 1969 submitted herewith, there is not a scintilla of doubt that DOWNE COMMUNICATIONS, INC. had no basis to make any claim of a breach of contract by MASTERCRAFT for allegedly not registering that stock by May 31, 1970. The claim asserted by DOWNE COMMUNICATIONS, INC. in its letter dated June 4, 1970, was nothing but a pretext rather than a justification for its breach of contract. As shown by the supporting papers submitted on the attachment, DOWNE COMMUNICATIONS, INC. had, as of February 17, 1970, taken control of MASTERCRAFT ELECTRONICS CORPORATION. Whether MASTERCRAFT would do anything or not in regard to the registration of the stock which was in the possession of DOWNE COMMUNICATIONS, INC., was solely in the power of DOWNE COMMUNICATIONS, INC. Furthermore, since February 1970, JAVITS & JAVITS at the instance of DOWNE COMMUNICATIONS, INC. had been loaned to MASTERCRAFT ELECTRONICS CORPORATION as special counsel

EXHIBIT 19 - AFFIRMATION

for the purpose of registering the stock, the unregistered stock, of DOWNE COMMUNICATIONS, INC. JAVITS & JAVITS at the date of that letter dated June 4, 1970, was in the process of preparing the registration of that stock.

50. The fact of the matter is that DOWNE COMMUNICATIONS, INC., simply never intended to perform that contract when it signed it. Its purpose was to inflate the value of its own stock by using the value of the stock of MASTERCRAFT ELECTRONICS CORPORATION and thus to increase the price of the DOWNE COMMUNICATIONS, INC. stock.

51. It is interesting to note that DOWNE COMMUNICATIONS, INC. created an income item out of its own breach of contract with MASTERCRAFT. At prospectus page 28, second paragraph, lines 5 to 8, DOWNE COMMUNICATIONS, INC. created an income for itself out of its breach of contract in the amount of \$961,975.00 for the year 1970 alone. In 1971, it credited itself with \$1,224,167.00 when it did a similar thing to other companies. This figure was included as an income in its consolidated balance sheet at page 68 of the prospectus under item 2, sub-item 3, within the figure of \$1,376,750.00. (Note 3(c) Prospectus page 80).

52. The Court should keep in sight the fact that the \$2,000,000.00 attachment is a fraction of the total amount demanded in this action.

EXHIBIT 19 - AFFIRMATION

53. These defendants appeal to the Court in tone seeking to paint themselves as innocent victims of this plaintiff and this attachment and that they have done nothing to justify such an action. The plain fact is that these defendants have no standing in justice to complain. This defendant corporation is a rapacious corporate malactor and its mentor EDWARD R. DOWNE, JR. has willfully, maliciously and callously committed the acts charged to them in the complaint and in the affidavit submitted by AL DAYON in support of the order of attachment. These defendants have destroyed a publicly held corporation, namely MASTERCRAFT ELECTRONICS CORPORATION, taking and wasting its assets without a thought for the stockholders of MASTERCRAFT. These defendants have literally stolen 3,276,000 shares of stock owned by the plaintiff AL DAYON in MASTERCRAFT ELECTRONICS CORPORATION.

54. The reaction of these defendants is the same reaction that every malactor who is caught and brought to the bar of justice, the malactor speaks only of his discomfort and wishes the Court not to mention or to consider the pain and loss to the victim.

55. The late United States District Court Judge William J. Hurlens well stated the public policy in regard to permitting attachments for securit, in cases involving fraud, to wit:

EXHIBIT 19 - AFFIRMATION

"The public policy permitting attachment for security in cases involving fraud, (is) that the defendant's prior conduct makes it likely that he would disregard any judgment rendered against him and frustrate plaintiff's efforts to collect the judgment."

56. These defendants have already demonstrated their utter contempt for the ordinary and proper forms and procedures of the law by the misuse and by the abuse of the law in their dealings with two Justices of this Court, as already noted. Their purpose was to use any means to lift the lien of the attachment levy so that they could take out and dissipate their bank balances and keep them from being subjected to this attachment. The means that they used was outside of the limits of proper procedure and stamps them. The facts in this regard have already been spread before the Court.

57. On Friday, October 27, 1972, I telephoned to officers of both the Bank of New York and the First National City Bank. I was informed that on Tuesday, October 24, 1972, and on Wednesday, October 25, 1972, the defendant DOWNE COMMUNICATIONS, INC. sought to have those banks lift the levy of the Sheriff's attachment so that they could withdraw monies therefrom. I was informed by each bank that counsel for each bank refused to

EXHIBIT 19 - AFFIRMATION

authorize the banks to release any money in reliance upon the order to show cause dated October 23, 1972. Thus, after all of their maneuvers to release the money on deposit at those banks, the defendants were blocked not only by Justice Capozzoli's order made on Wednesday afternoon, October 25, 1972, but also by the actions of the banks' attorneys.

58. At the time of the hearing before Justice Capozzoli, I stated to Justice Capozzoli that the purpose of the defendants obtaining the order to show cause dated October 23, 1972 was to lift the levy of the attachment just long enough for them to withdraw their money from the banks. At that time, however, the defendants and their attorneys had already been blocked unofficially by the banks' attorneys in their scheme and by the late afternoon of October 25, 1972, they were blocked officially by the order of Justice Capozzoli. Faced thus with the frustration and defeat of their scheme, they apparently set about to create some evidence which they might point to as showing that far from scheming to frustrate the levy of attachment these upstanding citizens added to the levied bank accounts in order to permit them to say "How could we be accused of trying to dissipate and conceal our bank money when we deposited \$500,000.00 of new money into the attached bank account at First

EXHIBIT 19 - AFFIRMATION

National City Bank on Thursday, October 26, 1972, after Justice Capozzoli's order."

59. This scheme could only be the product of a very tricky mind, and I will not even ascribe it to any legal minds. The Court will surely make its own conclusions from the facts.

60. M. LOUGHLIN, the Treasurer of DOWNE COMMUNICATIONS, INC., in his affidavit sworn to October 27, 1972, states, as to the "deposit" of \$500,000.00, only as follows, at page 2 top thereof:

"Annexed hereto as Exhibit I is a photocopy of a recent deposit slip (in the amount of \$500,000.00) dated October 26, 1972, made with the First National City Bank. Clearly plaintiffs' allegations concerning alleged concealment of assets is unfounded".

61. This Court should carefully note that this Treasurer of DOWNE COMMUNICATIONS, INC. does not aver that there was a "deposit", or that there was a "deposit of money". This Treasurer of DOWNE COMMUNICATIONS, INC. simply points to a "deposit slip". He does not claim that there was "deposit", or that the deposit slip represents a deposit of new money.

EXHIBIT 19 - AFFIRMATION

62. An examination of this deposit slip shows the following:

"DPI-Bank of New York-\$500,000.00

Total DCI \$500,000.00"

The (P) in "DPI", was probably intended to be a "C". At the bottom of the deposit slip is the designation "DCI". DCI is DOWNE COMMUNICATIONS, INC. (affidavit of FRANCIS A. LOUGHLIN, sworn to October 27, 1972, page 1).

63 Thus, what really was involved in that deposit slip transaction was that DOWNE COMMUNICATIONS, INC. deposited into its First National City Bank Account (which had been levied on by the Sheriff under the order of attachment) a check which had been drawn by it on its own account at Bank of New York (which also had been levied on by the Sheriff). That check which was deposited in the First National City Bank was worthless because Bank of New York would not pay out on that account of DOWNE COMMUNICATIONS, INC. This piece of business was obviously intended to put something over on this Court and on the plaintiffs. It is a piece of fakery that should not be overlooked by this Court.

EXHIBIT 19 - AFFIRMATION

64. The urgent necessity of this attachment is proved not only by the fraudulent schemes perpetrated by the defendants upon the plaintiffs and attempted to be perpetrated before this Court by these defendants, it is also proved by the fact that the defendant DOWNE COMMUNICATIONS, INC., which is a foreign corporation, is unable now and will be unable in the future, to respond to a judgment, not alone because of its tricky and scheming attitude and nature, but also because it has no tangible valuable assets in this State that can be applied to a judgment and thus the judgment which will be obtained by the plaintiffs in this action will be frustrated and rendered uncollectable.

65. The defendants' motion should be denied with costs.

Dated: October 30, 1972

S/ CHARLES SUTTON
CHARLES SUTTON

- 2 -

Kindly indicate your agreement with the foregoing by signing the enclosed copy of this letter and returning it in the enclosed envelope.

Very truly yours,

DOWNE COMMUNICATIONS, INC.

By _____
Edward R. Downe, Jr.,
President

AGREED to this 8th day
of January, 1968.

MASTER-CRAFT ELECTRONICS CORP.

By Edward R. Downe, Jr.
President

641 Lexington Avenue
New York, New York

January 8, 1969

Master-Craft Electronics Corp.
1115 Broadway
New York, New York 10010

Gentlemen:

Reference is made to the letter agreement dated December 26, 1968 among you, Downe Communications, Inc. ("Downe"), Regal Advertising Associates Corp. and Campbell-Reynolds Inc. (the "Agreement").

This is to confirm our mutual understanding and agreement that, notwithstanding anything to the contrary contained in the Agreement, you shall not be obligated to register, prior to May 31, 1970, any shares of Master-Craft common stock delivered by you pursuant to the Agreement and it is further understood and agreed that should you have certified financial statements as of the end of your fiscal year (i.e. February 28, 1970) prior to May 31, 1970, you shall use your best efforts to register the Master-Craft common stock, pursuant to Paragraph 4 of the Agreement, forthwith.

We further understand and agree that the words "to facilitate the sale of said common stock if the same becomes necessary.", should be added at the end of Paragraph 4.(a)(iv) of the Agreement.

EXHIBIT 20 - AFFIRMATION

SUPREME COURT : BRONX COUNTY

X

AL DAYON, etc.,

Plaintiff,

-against-

DOWNE COMMUNICATIONS, INC.,
et al.,

Defendants.

X

LEONARD BAILIN, an attorney duly admitted to New York
practice affirms under penalty of perjury:

1. I am an attorney duly admitted to practice law in
the State of New York since 1951. I have my offices at 292
Broadway, New York City. I am a Certified Public Accountant in
the State of New York since 1958. I am an associate professor of
taxation at Pace College, a lecturer and author of many tax
articles appearing in the Journal of Taxation, the Tax Institute
of CWPPost College, the New York Times and the Journal of Medical
Economics.

2. I was requested by CHARLES SUTTON, ESQ., the attorney
for the plaintiff herein, to review the prospectus dated July 25,
1972, as to DOWNE COMMUNICATIONS, INC. and to render an opinion
as to the financial condition of that company.

EXHIBIT 20 - AFFIRMATION

3. I have reviewed the prospectus and it is my opinion that the true financial position of the consolidated companies (prospectus, pages 68, 69) is an excess of liabilities over real assets in the amount of \$2,171,000.00, if inventories, receivables and prepaid items, are realizable in full. The significance of the numerous pending law suits against the company with claims of damages in the tens of millions of dollars cannot be overlooked. (See, Note 11, consolidated balance sheet, prospectus pages 69; 88-90; 60-62).

4. Regarding the consolidated balance sheet appearing at pages 68-69 of the prospectus dated July 25, 1972, an examination indicates the following:

<u>TOTAL ASSETS: (Using round numbers)</u>		
(1) Current Assets		23,286,000.
(2) Investments		
(a) Bartell Media Corp. at full market value*		3,910,000.
(b) Other Investments (notes 3c and 6)**		1,382,000.
(3) Investment in businesses sold in 1972***		1,366,000.
	TOTAL	\$29,044,000.

EXHIBIT 20 - AFFIRMATION

* See, affidavit of Francis A. Loughlin sworn to October 27, 1972 states a market value of 3 million dollars.

** See, Note 4, Prospectus pages 81, 82.

*** See, Prospectus, page 81. Unregistered shares of stock in unnamed companies. See, also, Prospectus pp. 12; 80-81; 83-84.

TOTAL LIABILITIES

(1) Current Liabilities	\$16,275,000.
(2) Long Term Debt	6,814,000.
(3) Deferred Credits	<u>9,026,000.</u>
	TOTAL \$32,115,000.
TOTAL LIABILITIES	\$32,115,000.
TOTAL ASSETS	29,944,000.
NET LIABILITIES	(<u>\$ 2,171,000.</u>)

5. Since Consolidated Balance Sheet item "Property, Equipment and Leaseholds" (\$3,907,948), "Publishing Rights and Good Will" (\$9,334,638.), "Trademarks and Copyrights" (\$656,139.) which are listed as assets, would have little value in the event of a termination of company business, these items have not been valued. Thos items which have been valued have not been verified

EXHIBIT 20 - AFFIRMATION

or authenticated. They have been taken as assets at the value shown in the Consolidated Balance Sheet without further analysis.

6. Regarding the "Consolidated Statement of Operations", the profit and loss statement appearing at pp. 4,5 of the Prospectus, the following should be noted:

1969 - Loss (\$1,152,000.)

1970 - Loss (\$8,457,000.)

1971 - Profit \$1,772,000.

The first three months of 1972 reports a Profit - \$1,382,000. However, that figure is unaudited.

7. The 1971 profit includes questionable "income" of \$1,224,000. derived from the cancellation of advertising contracts (subject of law suits?) (Prospectus, pages 12, 80), and \$201,000. of reduction in a prior deducted loss. Eliminating these two items, the 1971 profit is reduced to \$347,000., assuming that all other figures are true and correct, which has not been confirmed.

EXHIBIT 20 - AFFIRMATION

8. It is interesting to note the following gross profit percentages taken from that Consolidated Statement of Operations, at Prospectus, pp. 4,5, i.e. Ratio of Gross profit (Sales income less cost of production) to Sales:

1969 - 3.16%

1970 - negative

1971 - 2.84%

First three months, 1972 - 7.03% (unaudited)

9. The apparent large increase in gross profit for the first three months of 1972 is most unusual, and is not accounted for.

10. It is to be noted that the statement submitted to the Securities and Exchange Commission is not usually examined for authenticity or accuracy by the S.E.C., or by any public accountants.

Dated: October 30, 1972

S/LEONARD BAILIN
LEONARD BAILIN

EXHIBIT 21 - ORDER TO SHOW CAUSE

K2

At a Special Term, Part ~~VII~~ of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, 60 Centre Street, in the City, County and State of New York, on the ~~5th~~ day of January, 1973.

P R E S E N T:

HON. VINCENT A. MASSA

Justice.

- - - - -
AL DAYON, individually and on behalf of MASTER-CRAFT ELECTRONICS CORP.,

Plaintiff,

-against-

DOWNE COMMUNICATIONS, INC., EDWARD R. DOWNE, JR., THE CHEMICAL BANK, L. F. DOMMERICH CO., INC., JOSEPH O. EARLOW, IRWIN NATOV, ERIC M. JAVITS, REGAL ADVERTISING ASSOCIATES CORP., CAMPBELL-REYNOLDS, INC., ALEXANDER SALES CORPORATION, JOHN DOE, RICHARD ROE and RICHARD ROE, INC., the last three names being fictitious, the true names being presently unknown,

ORDER TO SHOW CAUSE

Index No. 23573/72

Assigned to I. C.
Part VII

Defendants.

- - - - -
Upon reading and filing the annexed affidavit of SAUL M. LANGER, duly sworn to January ~~5~~, 1973, together with the exhibits annexed thereto and upon the verified complaint and upon all the papers and proceedings heretofore had herein, and

EXHIBIT 21 - ORDER TO SHOW CAUSE

sufficient reason appearing therefor, it is

On motion of OTTERBOURG, STEINDLER, HOUSTON & ROSEN, P.C.,
attorneys for defendants, Chemical Bank (sued herein as above),
L. F. Dommerich & Co., Inc. (sued herein as above), Joseph O.

Barlow and Irwin Natov (sued herein as above) it is

ORDERED, that plaintiff SHOW CAUSE at Special Term, ~~Part VI~~,
of this Court to be held at the Courthouse, 60 Centre Street,
in the City, County and State of New York on the 18th day of
January, 1973 at 9:30 o'clock in the forenoon of that day or as
soon thereafter as counsel can be heard WHY an Order should not be
made and entered herein pursuant to Article 31 CPLR and CPLR 2004
extending the above-named defendants' time to answer or move with
respect to the verified complaint until ten days after plaintiff
has appeared for the taking of his deposition upon oral questions,
and such deposition has been concluded, and it is further

ORDERED, pursuant to CPLR 2004 that the said defendants'
time to serve an answer or make any motion addressed to the
verified complaint herein be, and it hereby is extended to and
including ten days after the service upon said defendants'
attorneys of a copy of the Order entered on this motion, together
with Notice of Entry thereof, or the further order of this Court,

EXHIBIT 21 - ORDER TO SHOW CAUSE

and it is further

ORDERED, that service of a copy of this Order upon the attorney for plaintiff, CHARLES SUTTON, at 299 Broadway, New York, New York, on or before January 5th, 1973 be deemed good and sufficient service.

E N T E R:

S/VAM
J. S. C.

EXHIBIT 22 - ORDER

Supreme Court
New YorkTRIAL TERM PART **VII**

INDEX NUMBER

23573-72

PRESENT

HON.

Vincent A. Massi
Justice.

A

<i>Dayan</i> <i>Lowne Communications Inc.</i>	1
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The following papers numbered 1 to
 read on this motion

this day of 19

Calendar No.

Order to Show Cause and Affidavit Annexed & exhibits

PAPERS NUMBERED

1-6-12

Order to Show Cause and Affidavits Annexed

14

Answering Affidavits

15

Replying Affidavits

13-

Affidavits AdmissioN of SERVICE

Filed Papers (County Clerk's Office)

Notice of Examination and Pleadings

12A

Exhibits of Defendant

Copies Papers

Referee's Report

Stenographer's Minutes

Stipulation

EXHIBIT 22- ORDER

Upon the foregoing papers this motion to extend time to answer until 10 days after the taking of an oral deposition is granted to the extent of dismissing the complaint with leave to plaintiffs to serve an amended complaint on all defendants within 30 days after service of a copy of this order with notice of entry.

This is one of several motions addressed to the complaint separately made by defendants. The objections to the complaint are fully justified. As to the corporate plaintiff, the complaint fails to comply with Section 626(c) of the General Corporation Law and Rule 3015(b) of the CPLR. With respect to the complaint as a whole, the allegations are so vague and ambiguous that none of the defendants may reasonably be expected to answer. If plaintiffs avail themselves of the leave granted, the amended complaint should cure the defects indicated and contain a clear, concise and definite statement specifying the manner and extent of each defendant's participation in the claimed wrong perpetrated upon plaintiffs.

ad.

2/23

1973

J. S. C.

Plaintiff's

Defendant's

Relator's

Respondent's

Petitioner's

Eduardo A. Perez

22

Services of three (3) copies of
the within _____ is
hereby admitted _____ day
of _____, 197_____

Attorney for _____

3 Copies Received
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DEPARTMENT OF LAW
4-11-9 - 14113
NEW YORK CITY OFFICE
J. Lefebvre
ATTORNEY GENERAL